EU REGULATION MICA OBLIGATIONS AND SIMILARITIES TO MFSA'S VFA FRAMEWORK

LEGAL REPORT

Written by the MK Fintech Partners Legal Team

mkfintechpartners.com

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Scope and Primary Aims of the MiCA Regulation

On April 20, 2023, a regulation on crypto assets known as the 'Markets in Crypto-assets Regulation' ("MiCA") was approved by European lawmakers. Aiming to achieve harmonisation while avoiding market fragmentation, this regulation will be applicable throughout the European Economic Area and will supersede any national regime relating to crypto-assets that is currently in place. However, this will not affect any anti-money laundering or countering the finance of terrorism legislations.

Overall, this regulation aims to exert significant control and regulation over the crypto-asset industry; which has previously experienced extensive fraud and market abuse due to the lack of regulatory control. Implementing requirements relating to the issuance, offering and marketing of crypto-assets along with the authorisation and operation of Crypto-asset Service Providers ("CASPs") and the prevention of market abuse; the European Commission believes that this proposed regulation will provide clarity in relation to the crypto-asset industry while simultaneously promoting innovation and competition, consumer protection, market integrity and financial stability within the EU financial sector.

Now, the EU Council will need to approve MiCA, after which it will be published in the EU's official journal, coming into force 20 days later. MiCA will apply to stablecoins after 12 months, and will apply to CASPs after 18 months.

This article seeks to outline comparative remarks between the approved MiCA regulation and the VFA Framework applicable in Malta

REQUIREMENTS APPLICABLE TO CASPS

Under MICA.

Under Title V, MiCA lays down an extensive list of requirements for the authorisation and operating conditions of CASPs.

A priori, only legal persons with a registered office in any EU member state will be eligible to apply for authorisation as a CASP.

As part of the application process, they must provide information which includes details of the legal entity, submission of internal policies and procedures, its proposed program of operations, including governance arrangements, risk management and a business continuity plan. More specifically, they must demonstrate to their respective regulators sufficient capital to operate efficiently and absorb losses, effective governance arrangements, internal control systems; and effective handling of conflict of interest while averting potential market abuse and manipulation.

Legal persons seeking authorisation as a CASP will be required to submit an application to their regulator in the member state where they have registered their office. It is worth considering that any CASP already operating in a member state under an existing national crypto-asset regime will not be required to resubmit any of the information mentioned previously as long as the information provided at the time of its authorisation is still relevant (up to date).

In terms of capital requirements, CASPs will need to maintain sufficient capital at all times that will need to be equal to or higher than the minimum capital requirement prescribed in Annex IV presented below, or one quarter of the fixed overheads of the previous year. (Reviewed annually)

Annex IV - Minimum Capital Requirements for Crypto-Asset Service Providers

Crypto-asset service providers	Type of crypto-asset services	Minimum capital requirements under Article 60(1)(a)
Class 1	[Class 1] Crypto-asset service provider authorised for the following crypto-asset services: – reception and transmission of orders on behalf of third parties; and/or – providing advice on crypto-assets; and/or – execution of orders on behalf of third parties; and/or – placing of crypto-assets; and/or – portfolio management on crypto-assets - transfer of crypto-assets	[Class 1] EUR 50,000

Annex IV - Minimum Capital Requirements for Crypto-Asset Service Providers

Class 2	[Class 2] Crypto-asset service provider authorised for any crypto-asset services under class 1 and: – custody and administration of crypto-assets on behalf of third parties. – exchange of crypto-assets against funds; – exchange of crypto-assets against other crypto-assets.	[Class 2] EUR 125,000
Class 3	[Class 3] Crypto-asset service provider authorised for any crypto-asset services under class 2 and: – operation of a trading platform for crypto-assets.	[Class 3] EUR 150,000

CASPs who seek authorisation in the EU will also need to demonstrate to their regulator that their managemental structure is fit and proper while ensuring the collective appropriate level of knowledge, skills and experience to adequately fulfil their duties and comply with regulatory obligations. CASPs must show that they adhere to the following organisational requirements:

Employ personnel with the skills, knowledge and expertise necessary to discharge their responsibilities.

Ensure continuity and regularity in the delivery of services to clients.

Establish an effective business continuity policy and disaster recovery plans.

Have internal control mechanisms and effective procedures for risk assessment.

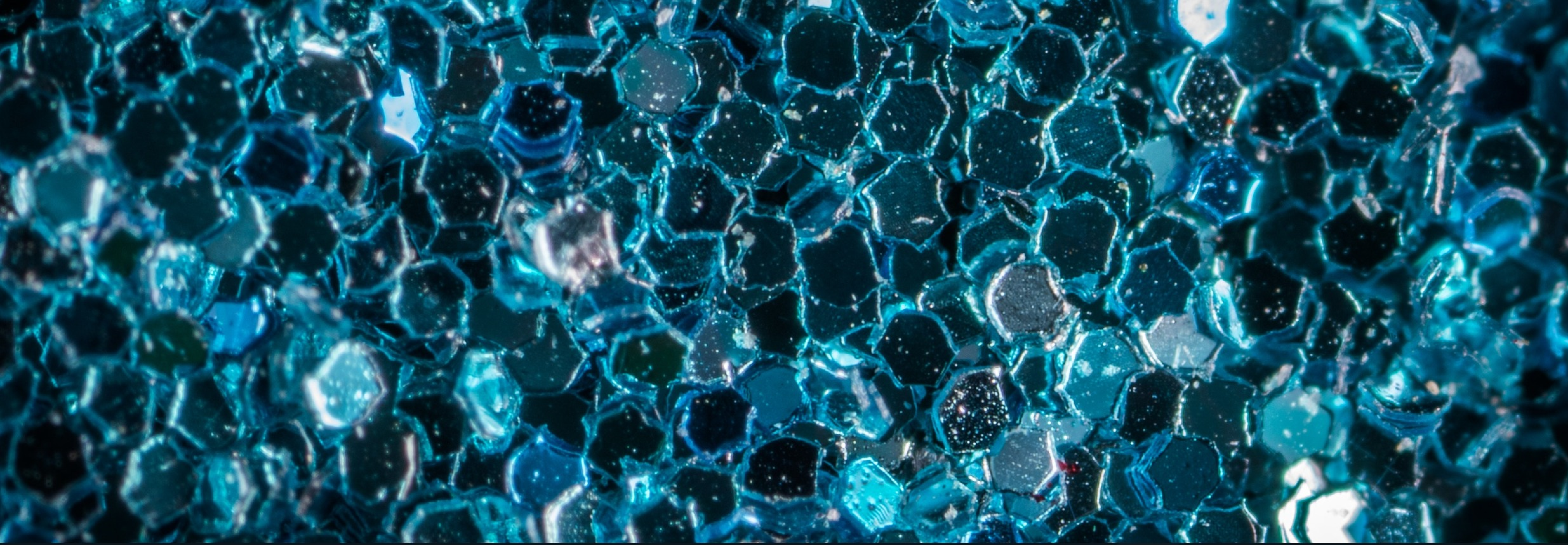
Have systems and procedures to safeguard the security, integrity and confidentiality of information held.

Keep records of all crypto-asset services, orders and transactions undertaken.

Have systems and procedures in place to monitor and detect market abuse and be able to immediately report any suspicion to their regulator.

When seeking authorisation to operate a trading platform (exchange), CASPs will need to adhere to the regulations laid out in Article 68: ('Operation of a trading platform for crypto-assets'). Rules include minimum due diligence and approval processes for admittance of crypto-assets, policies and procedures in regard to fees and liquidity, and requirements to ensure fair trading. It 5 may be noted that CASPs are responsible for ensuring that all listings are complying with the operating rules and no crypto-asset should be admitted unless a whitepaper has been published in line with this regulation.

The structure of fees must be fair, clear and non-discriminatory and must not create incentives that may possibly lead to disorderly trading conditions or market abuse. CASPs must also ensure that their trading systems are resilient while having the capacity to operate under intense market stress.



Crypto-assets which have inherent anonymisation functions (i.e., ‘Privacy Coins’) will not be permitted to be established on a trading platform unless the holders of the assets and their transaction history can be identified by a CASP or a relevant regulator.

Applicable to providers of advice on crypto-assets, CASPs must assess the compatibility of crypto-assets with the needs of their clients and make recommendations only when it is in the clients’ best interest. CASPs will need to have policies and procedures in place that require them to obtain data in regard to their clients’ knowledge and experience in crypto-assets, investment objectives and financial situation, including the ability to bear losses and understanding of any risks involved.

Rules that concern the topic of market abuse are applicable to all activity conducted by a person in relation to crypto-assets admitted to trading on a trading platform operated by an authorised CASP, or for which a request to trade on such a platform has been made.

Finally, MiCA will introduce ‘passporting’ rights which permits CASPs who are authorised in any member state to provide crypto-asset services throughout the EU by either establishing a branch or another form of physical presence in a respective member state or, they may choose to operate remotely. However, it is imperative to note that CASPs who are aiming to provide cross border services will need to notify their regulator before doing so.

THE MALTESE VIRTUAL FINANCIAL ASSETS (VFA) FRAMEWORK (MALTA)

The Malta Financial Services Authority ("MFSA")is Malta's financial regulator. There are rules and regulations in place which must be adhered to, in order to be authorised to provide services for crypto-assets to/from Malta. Similar to the principle outlined in the MiCA regulation, the MFSA encourages all service providers to act ethically, in a fair and honest manner to always deliver services in the best interest of their clients and the integrity of the Maltese financial system. Service providers should also communicate openly and honestly with the MFSA or any other relevant regulatory authority to ensure compliance with all applicable Maltese and EU legislation.

In order to become authorised to operate as a CASP in Malta, one will need to establish a legal entity in Malta and apply for a licence from that legal entity. This needs to be done through a licensed and registered VFA Agent (such as MK Fintech Partners).

All applicants are instructed to communicate honestly and fairly with their corresponding VFA Agent as they will act as an intermediary between the applicant and the MFSA. It is imperative that any necessary information required by the VFA Agent is delivered openly to ensure the efficiency of the process.

There are four classes of VFA service licences under the VFA Framework:

Class 1 – Licence holders authorised to receive and transmit orders and/or provide investment advice in relation to one or more VFA and/or the placing of VFAs. Class 1 licence holders are not authorised to hold or control clients' assets or money (Application fees of EUR 6,000 + 5,500 annual supervisory fees for revenues up to 50k). Class one includes Introducers and Offering Cryptocurrency Investment Advice.

Class 2 – Licence holders authorised to provide any VFA service but not to operate a VFA exchange or deal for their own account. Class 2 licence holders may hold or control clients' assets or money in conjunction with the provision of a VFA service (Application fees of EUR 10,000 + 9,000 annual supervisory fees for revenues up to 250k). Class Two includes Introducers, Portfolio Managers, Brokers and Custodians (wallet providers), P2P exchanges.

Class 3 – Licence holders authorised to provide any VFA service but not to operate a VFA exchange. Class 3 licence holders may control clients' assets or money in conjunction with the provision of a VFA service (Application fees of EUR 14,000 + 12,000 annual supervisory fees for revenues up to 250k). Class Three includes Introducers, Portfolio Managers, Brokers, Custodians and Market Makers.

Class 4 – Licence holders authorised to provide any VFA service. Class 4 licence holders may hold or control clients' assets or money in conjunction with the provision of a VFA service (Application fees of EUR 24,000 + 50,000 annual supervisory fees for revenues up to 1m). Class Four includes Introducers, Portfolio Managers, Brokers, Custodians, Market Makers and Exchanges.

Fit and Proper Tests (due diligence exercises) are crucial to the MFSA. It is an assessment used to determine whether the applicant and any other people involved are suitable to fulfil their duties. The assessment may be applicable to 1) any person who has a qualifying holding in the Applicant, 2) Beneficial Owner, 3) member of the Board of Administration/Directors of the applicant, 4) Senior Manager, 5) Money Laundering Reporting Officer ("MLRO"), 6) Compliance officer 7) Risk Manager and any other person which the authority may deem necessary.

The applicant and selected persons must demonstrate and provide sufficient assurance to the authority that they are of good repute and possess intentions to act in an honest and trustworthy manner. They must also provide confidence to the authority that at both a collective and individual level, the persons have an appropriate level of knowledge, professional expertise, time 8 and experience to carry out their activities or functions within the applicant's proposed structure. This process of assessment involves a personal interview with the MFSA by the members of the CASP mentioned above, or any other member which fulfils certain key roles within the Corporate Governance structure.

Applicants must provide sufficient assurance to the authority that it is financially sound, and that adequate financial control is ensured along with the management of liquidity. The applicant must maintain an amount equal to the initial capital required for their authorisation and as permanent minimum capital at all times the amount specified in the table below:

VFA Services Licence	Initial Capital Requirement (€)
Class 1	50,000 or 25,000 and Professional Indemnity Insurance (**"PII"**)
Class 2	125,000
Class 3	730,000
Class 4	730,000

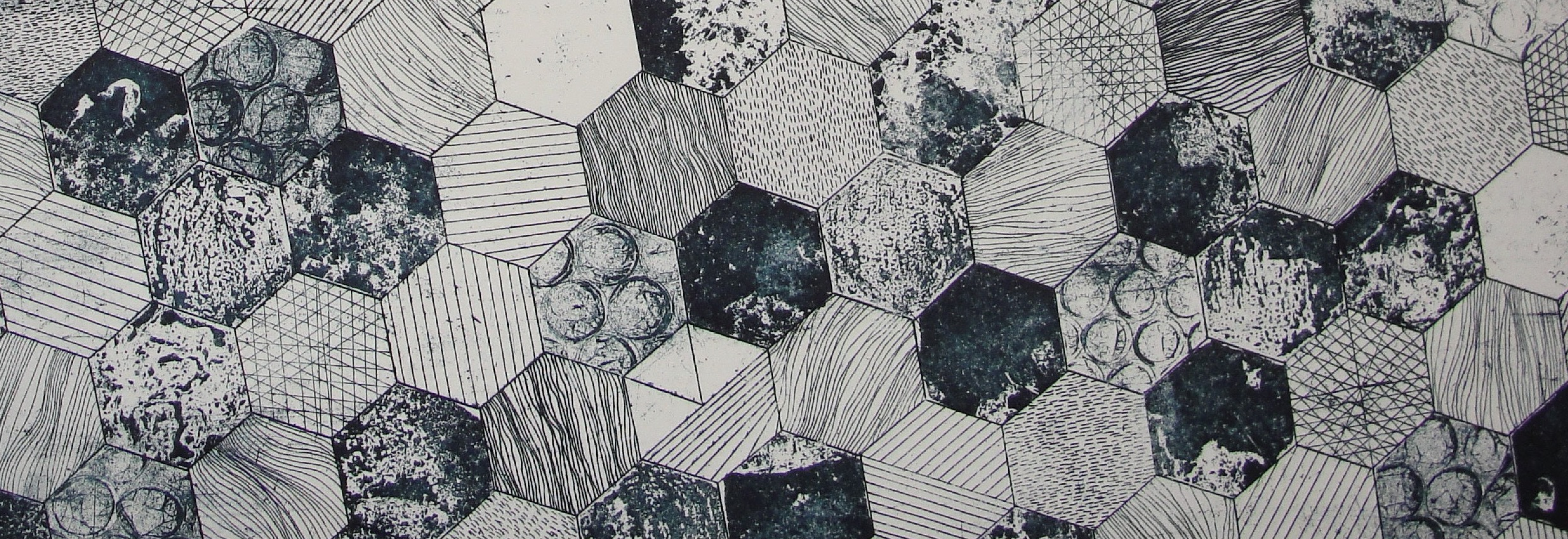
The applicant must demonstrate and provide evidence to the satisfaction of the authority that it has sufficient financial resources to remain viable and to carry out its services through economic cycles or to enable an orderly wind-down without causing undue economic harm to their clients or to the stability of the markets they operate in.

The process of application involves 3 phases:

Phase 1 (preparatory phase) – The applicant must notify the authority in writing and via e-mail through its VFA Agent stating the intention to apply for a VFA services licence. The statement shall include:

1. A comprehensive written description of the proposed structure,
2. The VFA service/s for which licensing is being sought identifying the persons proposed to hold key positions thereto,
3. A legal opinion that the proposed activity does not fall within the scope of traditional financial services legislation.

Upon receipt of the statement of intent, a mandatory preliminary meeting with the applicant shall be scheduled. The applicant shall, by no later than 60 days from the date of the preliminary meeting, submit an application form with any supporting documentation. Applicants must also pay the non-refundable application fee to the authority upon submission of the application form. The authority will not initiate any reviews of applications which are incomplete. Therefore, the submission shall be only considered complete when the authority receives the application fee and all necessary documentation required to progress.

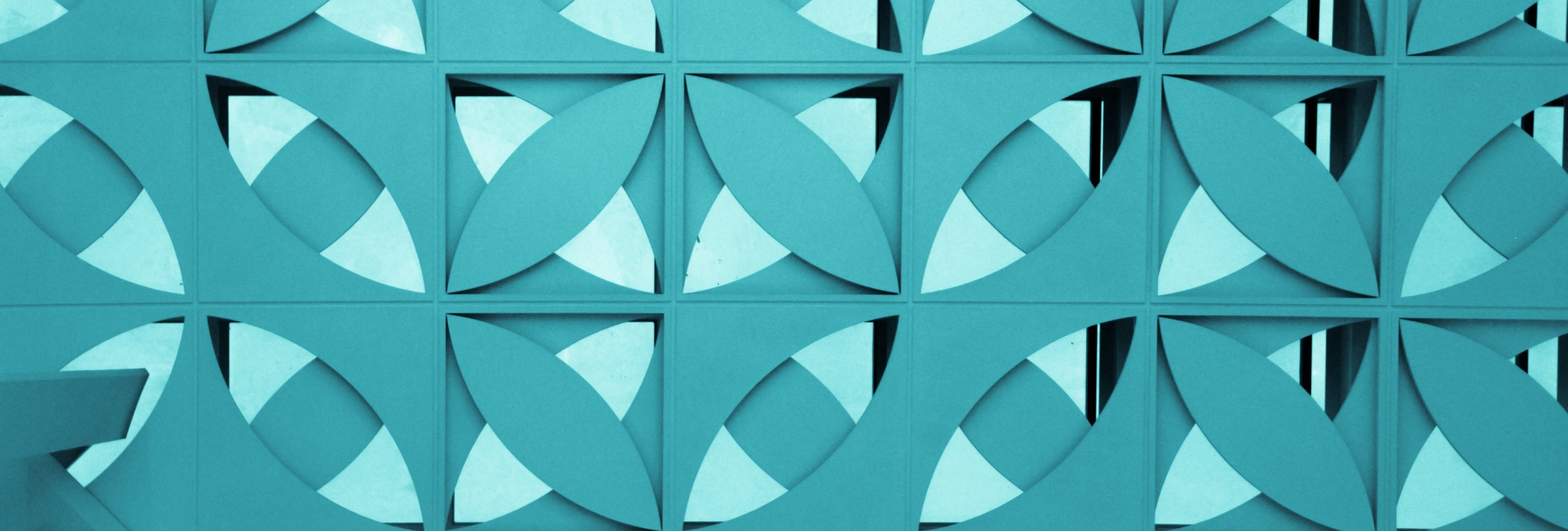


Phase 2 (pre-licensing phase) – Upon the submission of a complete application, the initiation of the application review and supporting documentation shall commence. It is the duty of the applicant and its VFA agent to ensure that the authority is informed of any changes required to the application in a swift manner. Upon satisfaction with the information provided in the application documents and completion of the fitness and properness assessments, the authority shall issue an 'In Principle Approval' which is valid for 3 months from the date of issuance.

During those three months, applicants shall:

- Finalise any outstanding issues raised during the application process
- Finalise any pre-licensing conditions as determined by the authority in the in-principle approvall
- Submit the original copies of the final application form together with all supporting documents.

Upon satisfaction of the requirements, the authority shall issue a VFA Services Licence.



Phase 3 (post-licensing and pre-commencement of business phase) – Licence holders are typically provided with an allocated time frame wherein a number of post-licensing matters determined by the authority would need to be resolved in order to commence business operations. It is the right of the MFSA to at any time revoke any current conditions of a licence or, in turn, add new ones.

The authority also possesses the power to revoke the licence of a VFA Service Provider if it fails to satisfy the post-licensing conditions within the given period of time as stipulated by the MFSA. If the conditions are satisfied within the timeframe, the licence holder may commence its VFA services business within 12 months of the date of issuance of the VFA Services Licence.

If it is the case where a licence holder is not in a position to abide by the conditions, the MFSA should be notified in writing which elaborates the reason/s for such delay along with an updated business plan which indicates the proposed date of commencement of business. Taking into regard the circumstances along with the information provided, the MFSA may choose to suspend or cancel the licence in accordance with the relevant provisions of the VFA Act. It is the duty of the service provider to adhere to the applicable titles of the VFA act upon being granted the VFA Services Licence

Furthermore, the licence holder must notify the authority of any material changes which occur post-licensing such as a change of director or auditor.

The holder must take reasonable steps to ensure continuity and regularity in the performance of its VFA services. To this end, the Licence Holder shall employ appropriate and proportionate systems, resources and procedures.

The Licence Holder must:

- Establish, implement and maintain decision-making procedures and an organisational structure which in a clear and organised manner specifies reporting lines and allocates functions and responsibilities
- Ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities
- Establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Licence Holder.
- Employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them.
- Establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Licence Holder.
- Maintain adequate and orderly records of its business and internal organisation.
- Ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly and professionally.

For such purposes, the Licence holder shall take into account the nature, scale and complexity of its business and the nature and range of VFA services undertaken in the course of that business.

Finally, policies in Risk Management, Compliance and Cybersecurity are also requested to be submitted; fully audited in compliance with international standards correspondingly to the nature and extensions of the business in place

REQUIREMENTS APPLICABLE TO CRYPTO-ASSETS ISSUERS

Under MICA.

Regarding Issuers, MiCA distinguishes between three types: Issuers of crypto-Assets other than Asset-Referenced Tokens ("ARTs") and e-Money Tokens ("EMTs"), Issuers of ARTs and Issuers of EMTs.

For the first category, in order to market crypto-assets within the EU, issuers must be incorporated as a legal entity and subsequently publish a whitepaper which is in accordance with Article 5.

The information which must be inserted in the whitepaper can be found in the example presented below:

The whitepaper

A whitepaper needs to include the following information outlined under Article 5(1):

(a) a detailed description of the issuer and a presentation of the main participants involved in the project's design and development;

(b) a detailed description of the issuer's project, the type of crypto-asset that will be offered to the public or for which admission to trading is sought, the reasons why the crypto-assets will be offered to the public or why admission to trading is sought and the planned use of the fiat currency or other crypto-assets collected via the offer to the public;

(c) a detailed description of the characteristics of the offer to the public, in particular the number of crypto-assets that will be issued or for which admission to trading is sought, the issue price of the crypto-assets and the subscription terms and conditions;

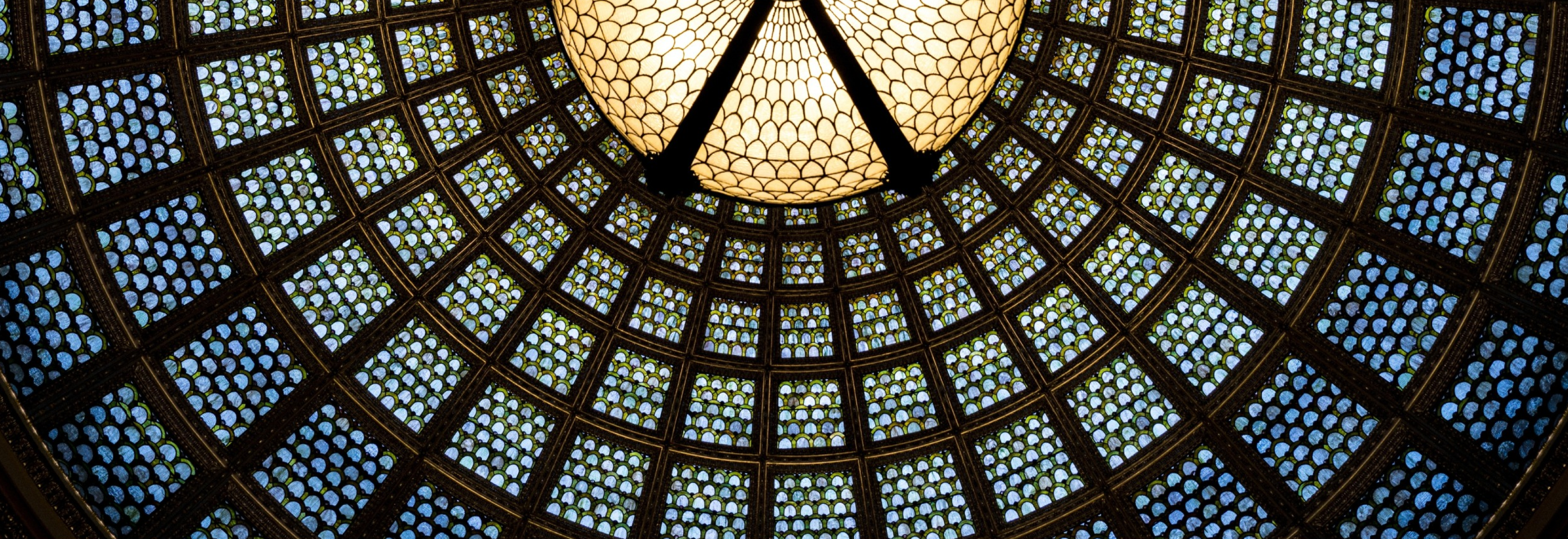
(d) a detailed description of the rights and obligations attached to the crypto-assets and the procedures and conditions for exercising those rights;

(e) information on the underlying technology and standards applied by the issuer of the crypto-assets allowing for the holding, storing and transfer of those crypto-assets;

(f) a detailed description of the risks relating to the issuer of the crypto-assets, the crypto-assets, the offer to the public of the crypto-asset and the implementation of the project;

(g) the disclosure items specified in Annex I.

Fair, Clear, Not misleading



Additionally, the whitepaper must include the following statement:

"This crypto-asset white paper has not been approved by any competent authority in any Member State of the European Union. The offeror of the crypto-assets is solely responsible for the content of this crypto-asset white paper"

The whitepaper must also include a summary, functioning as an introduction which includes required statements such as confirmation that the whitepaper is not a prospectus and that the tokens issued are not financial instruments.

All whitepapers are to be dated and they must include a statement from the management body of the issuer of the crypto-assets confirming that the whitepaper complies with the requirements, and ensuring that to the best of their knowledge, the information submitted in the document is correct and no significant omissions are present which would render the whitepaper misleading.

It must be written in at least one of the official languages of the home Member State or in a language customary in the sphere of international finance. Additionally, the whitepaper must be made available in machine-readable formats.

It is important to note that from a marketing standpoint, certain rules are involved which are:

- Ensuring that marketing communications are easily recognisable as such,
- The information presented is fair, clear and not misleading,
- The information within marketing communications is consistent with the information presented in the whitepaper,
- The marketing communications plainly states that a whitepaper has been published, indicating the address of the website of the issuer of the crypto-assets concerned.

Article 7: ‘Notification of the crypto-asset white paper, and, where applicable, of the marketing communications,’ includes notification requirements to the regulator which includes that:

I. Regulators shall not be required to give a whitepaper or marketing communications any approval. However, the whitepaper must be notified twenty working days before publication.

II. An assessment must be provided which explains the reasons as to why the crypto-asset outlined in the whitepaper is not a financial instrument or other type of asset regulated under other EU legislation.

III. The issuer must inform the regulator of issuances organised in other Member States, as well as any planned listings on a trading platform which is not in its home Member State. The regulator will then need to inform the other EU regulators where issues or listings are planned within two working days.

Issuers are to publish all necessary whitepapers on their website no later than the starting date of the offering or admission to trading. The published whitepaper must remain readily available on the issuer’s website for as long as the crypto-assets are held by the public and must be identical to the version notified to the respective regulator.

Upon the publication of a MiCA compliant whitepaper, the issuer may offer those crypto-assets (except ARTs and EMTs) to the entire union and seek admission to a trading platform for crypto-assets without being subject to further information requirements. If a time limit is set on the public offering of crypto-assets, issuers are to publish the results of the offering within 16 working days from the end of the subscription period.

Issuers of crypto-assets must offer a right of withdrawal to consumers which purchase crypto-assets directly from the issuer or from a CASP. Consumers may exercise the right to withdraw their crypto-asset purchase agreement without incurring any costs or giving reasons up to 14 days after their purchase. The respective issuer or CASP must reimburse all payments received by the consumer without delay and no later than 14 days after being informed of the consumer’s withdrawal decision

However, it may be important to consider that the right of withdrawal does not apply where the crypto-assets are admitted to a trading platform and may not be exercised after the end of a public offering’s subscription period.

Adding, several consumer protection provisions can be located, like the requirement for issuers of crypto-assets to always act in the best interest of the holders of crypto-assets and no individual who purchases crypto-assets may receive preferential treatment, unless disclosed in the whitepaper published by the issuer. Holders of crypto-assets may claim damages from an issuer or its management body for breaches of requirements under Article 5 to provide detailed information in the whitepaper that is fair, clear and not misleading.

Those issuers who establish time limits for their offer to the public are required to have placements in effect to monitor and safeguard funds or other crypto-assets raised during the offer. Funds collected during the offer to the public must be kept in custody by either:

1) A credit institution where the funds raised take the form of fiat currency,

2) A CASP authorised for the custody and administration of crypto-assets on behalf of third parties

When an offering of a crypto-asset is cancelled, the issuer must ensure that all funds collected from the purchasers are returned to them in a timely and efficient manner.

However, certain **exemptions** may benefit issuers in the circumstances below:

A) The crypto-assets are offered for free;

B) The crypto-assets are automatically created as a reward for the maintenance of the DLT or the validation of transactions;

C) The offer concerns a utility token of a good or service which exist or is in operation;

D) The holder of the crypto-assets has only the right to use them in exchange for goods and services in a limited network of merchants with contractual arrangements with the offeror.

Regarding asset-referenced tokens, MiCA will introduce several requirements for the issuance of such crypto-assets. Issuers must be authorised by the respective regulator in their home Member State prior to being permitted to offer tokens to the public or seek admission to a trading platform. In order to obtain such authorisation, the issuers of asset-referenced tokens must be established as a legal entity within the EU, or a credit institution as per Article 15a. Such entities which are authorised in a Member State will benefit from the right to passport.

However, it may be noted that there are two exemptions to the requirement to be authorised:

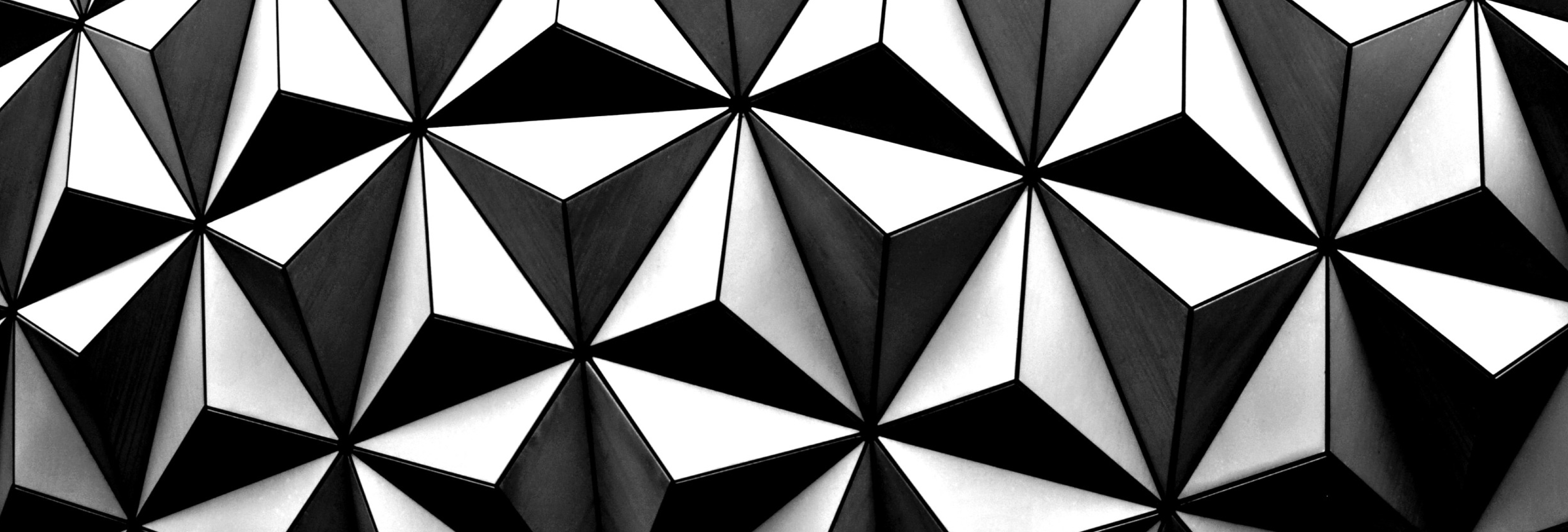
1. Where over a period of 12 months, calculated at the end of each calendar day, the average outstanding value of all of asset-referenced tokens never exceeds EUR 5,000,000, or the equivalent amount in another currency, and the issuer is not linked to a network of issuers covered by this exemption; or
2. Where the offer to the public of the asset-referenced tokens is solely addressed to qualified investors and the asset-referenced tokens can only be held by such qualified investors.

Regardless of these exemptions, publication of a whitepaper is constantly mandatory.

To acquire authorisation as an issuer of asset-referenced tokens, the legal entities must submit an application to their respective regulator in their home Member State. The application must include a business plan, a detailed description of the governance structure, the whitepaper and a legal opinion acknowledging that the asset-referenced tokens do not qualify as financial instruments, e-money, deposits or structured deposits.

Aside from the information presented previously, whitepapers for asset-referenced tokens must also include information relating to the governance arrangements, the reserve of assets, custody arrangements, the investment policy, rights of token holders and the complaint handling procedures.

In the event where no direct claim or redemption right has been granted to all the holders of asset-referenced tokens, the whitepaper must contain a clear statement that all holders of the crypto-assets do not have a claim on the reserve assets or cannot redeem the reserve assets with the issuer at any time.



Issuers of asset-referenced tokens must provide certain information on a continuous basis. This includes:

- The number of tokens in circulation; to be published on the website at least once a month.
- The value and composition of the reserve assets.
- The result of the audit conducted on the reserve assets.
- Information which is likely to have a significant impact on the value of the asset-referenced tokens or on the reserve assets.

The management body of issuers of asset-referenced tokens must demonstrate that they are fit and proper. This includes ensuring that all members are of good repute and possess the knowledge, skills and experience to carry out their duties. Issuers are also required to maintain policies and procedures which ensure their compliance with MiCA. Such policies relate to the reserve assets and their custody, the rights or absence of rights granted to holders, the mechanism through which tokens are issued, created and destroyed and the protocols for validating transactions and business longevity.

In addition to this, issuers must implement systems and internal control mechanisms for security access protocols, risk assessment and management, data protection and must be regularly audited by an independent auditor.

Issuers of asset-referenced tokens must constantly have in place own funds equal to an amount of at least the highest of the following:

A) €350,000

B) 2% of the average amount of reserve assets as per Article 32

C) a quarter of the fixed overheads of the preceding year, to be reviewed annually and calculated in accordance with Article 60(6).

Their own funds must consist of the Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of the Capital Requirements Regulation (575/2013).

Regulators of issuers of asset-referenced tokens may require them to hold an amount of own funds up to 20% higher or lower than the amount resulting from the application of point b elaborated on previously.

Rules which surround the custody of reserve assets are broad and require that suitable policies, procedures and contractual arrangements are established to ensure that the reserve assets are:

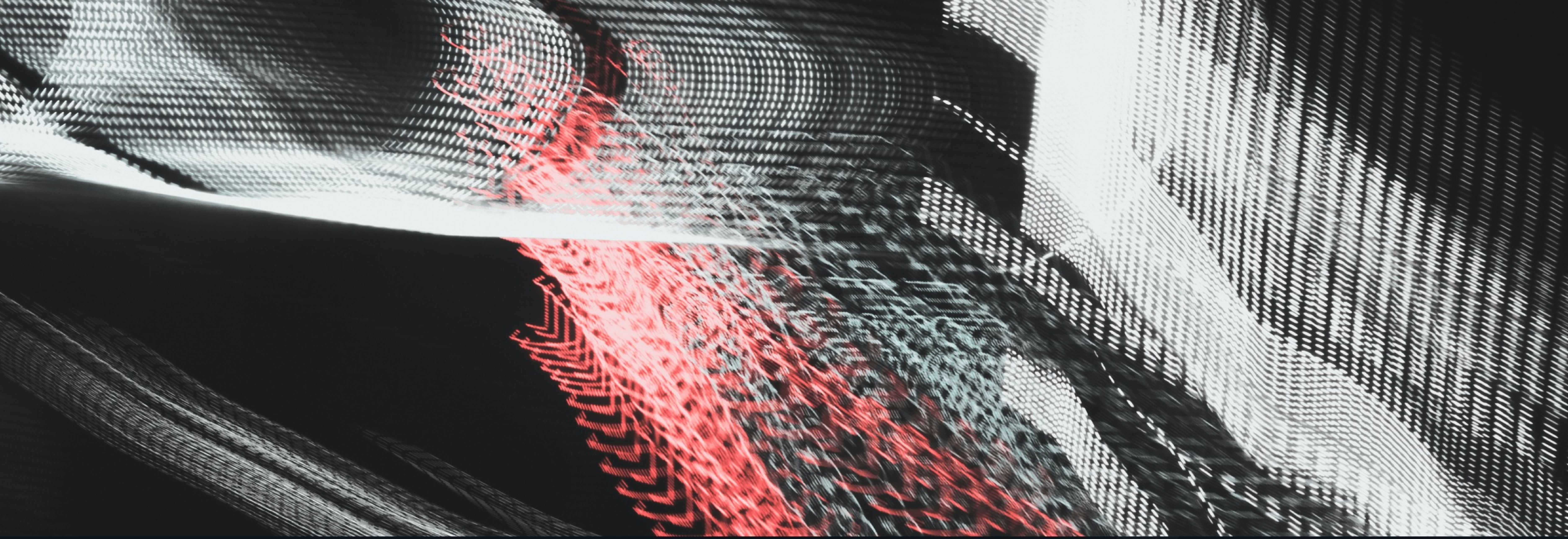
A) Segregated from the issuers' own assets.

B) Not encumbered nor pledged as a 'financial collateral arrangement,' a 'title transfer financial collateral arrangement,' or as a 'security financial collateral arrangement'.

C) Held in custody.

D) Promptly accessible to meet any redemption requests.

Issuers of asset-referenced tokens must clearly communicate the redemption rights granted to token holders. Policies and procedures must be put into place in respect of tokens granting a direct claim on the issuer, including conditions, thresholds, periods and timeframes for users to exercise rights, redemption mechanisms, valuation methodologies and fees.



In the case where the issuer does not grant redemption rights, it must establish mechanisms to ensure the liquidity of asset-referenced tokens. The issuer must ensure that a sufficient number of CASPs post firm quotes at competitive prices on a regular and predictable basis. The issuer must also establish and maintain contractual arrangements to ensure that the proceeds of the reserve assets are paid to the holders of asset-referenced tokens where the issuer

a) stops operating,

b) has been placed under an orderly wind-down, or

c) has its authorization revoked.

Issuers of asset-referenced tokens or CASPs must not provide for interest or any other benefit relating to the length of time wherein a holder of asset-referenced tokens holds their tokens.[1]

[1] Disclaimer: We are not a fan of this provision. The ECB are seeking to strike out stablecoins which may be presented as competition of central bank digital currencies. This will drive stablecoin issuers of asset references or fiat backed tokens out of Europe or encourage them to come up with creative business models to circumvent this unfair restriction. We believe that private issuers of money should be allowed to issue interest bearing coins and that it should be up to the consumer to decide where and with whom he would like to park his money.

Asset referenced tokens which meet at least three of the following criteria will be deemed significant at the point where authorisation will be reassessed by regulators yearly:

(a) the size of the customer base exceeds two million natural or legal persons;	(b) the value of the asset-referenced tokens issued or, where applicable, their market capitalisation exceeds EUR 1 billion;	(c) the number and value of transactions in those asset-referenced tokens exceeds 500,000 transactions per day or EUR 100 million per day;	(d) the size of the reserve of assets of the issuer of the asset-referenced tokens exceeds EUR 1 billion;	(e) the asset-referenced token is used in seven or more Member States.

The European Banking Authority (EBA) will also assess whether the issuer of asset-referenced tokens is significant, in which case their supervision will be carried out by the EBA.

Requirements for issuers of significant asset-referenced tokens will be more onerous than for non-significant token issuers given that the associated risks are significantly higher. Specific requirements for these types of issuers include:

A remuneration policy that promotes sound and effective risk management and that does not create incentives to relax risk standards.	Ensure that tokens can be held in custody by different CASPs, including by CASPs not part of the same group, on a fair, reasonable and non-discriminatory basis.	Establish a liquidity management policy and procedures.	Capital requirement threshold shall be set at 3% of the average amount of the reserve assets for issuers of significant asset-referenced tokens, rather than 2% for those which are not significant.

Concluding, the implementation of a wind-down plan is compulsory. This will primarily be adopted to demonstrate the ability of the issuer to conduct an orderly wind-down without causing undue economic harm to token holders or the stability of markets of the reserve assets. The plan will include contractual agreements, procedures and systems to ensure the proceeds from the sale of the reserve assets are paid to the token holders.

Issuers of electronic money tokens or EMTs must comply with two primary requirements:

1. is authorised as a credit institution, or as an 'electronic money institution' within the meaning of Article 2(1) of Directive 2009/110/EC; and
2. publishes a crypto-asset white paper notified to the competent authority, in accordance with Article 46

It is to be noted that Title II and III of Directive 2009/110/EC applies with respect to EMTs unless otherwise stated. There are some exemptions for the need of authorisation for EMTs, namely those exempted under Article 9(1) of Directive 2009/110/EC, however a white paper will still need to be provided to the competent authority.

The requirements of this title oblige issuers of EMTs to:

- Provide e-money token holders with a claim on the issuer.
- Issue e-money tokens at par value on receipt of funds.
- Redeem, upon request of the holder, at any moment and at par value, the monetary value of the tokens held either in cash or by credit transfer.
- State the conditions of redemption prominently in the whitepaper, including any applicable fees. Redemption fees may only be applied where these have been clearly stated in the whitepaper and must be proportionate and commensurate with the actual costs incurred.

As with ARTs, issuers of EMTs or CASPs shall not provide for interest, or any other benefit related to the length of time during which a holder of e-money tokens holds these tokens.

The required content and form of the whitepaper for e-money tokens is similar to that required under Title II for crypto-asset issuances. The whitepaper must:

- Be published on the issuer's website, including the information required under Title II and published in an identical format.
- Be fair, clear and not misleading without any material omissions.
- Include a statement confirming compliance with Title IV.
- Include a summary which confirms that the token holders have a redemption right at any moment and at par value, and explains the redemption conditions and fees.
- Have modification provisions when there are changes which will present a significant influence on the decision of a potential purchaser.

As with issuance of crypto-assets and asset-referenced tokens in Title II and Title III, there are provisions to give holders of e-money tokens the opportunity to claim for damages when there is an infringement of Article 46.

Marketing communications are to be established on the same basis as other issuances, with the additional requirement to possess a clear and unambiguous statement that all holders of the e-money tokens have a redemption right at any time and at par value against the issuer.

The EBA shall classify e-money tokens as significant e-money tokens using the same criteria and on the same basis used to classify significant asset-referenced tokens, and where at least three of the criteria established in Title III are met. Where the token is considered significant, the EBA will be the designated regulator of the issuer.

Issuers of significant EMTsshall apply the following requirements which apply to issuers of ARTs and significant ARTs:

A. Articles 32, 33 and 34 of MiCA (covering custody and investment of the reserve assets) instead of Article 7 of Directive 2009/110/EC

B. Paragraphs 1, 2, 3, and 3a of Article 41 of MiCA, which bring in similar additional provisions with significant asset-referenced tokens, such as liquidity management and the ability for the tokens to be held in custody and by CASPs outside of the issuers' group

Issuers under the Maltese VFA Framework.

An issuer (other than a public sector issuer) must be a legal person duly formed under Maltese Law.

The issuer shall commence the offering of its VFA to the public or shall proceed with the admission of its VFA to trading on a DLT (distributed ledger technology) exchange within 6 months from the date of registration of the whitepaper with the MFSA. In determining whether a DLT asset qualifies as a VFA, an issuer of a DLT asset shall, prior to offering such DLT asset to the public to or from Malta, or applying for its admission on a DLT exchange, undertake the Financial Instrument Test, which shall be signed by its board of administration and endorsed by its VFA agent.

It is the obligation of the issuer to draw up a compliance certificate in relation to its business annually. The certificate will be reviewed by the respective VFA agent who will determine if it is complete and accurate enough to be sent to the MFSA for review. The compliance certificate must contain the following information:

- Assurance that all local anti-money laundering (AML) and countering the finance of terrorism (CFT) requirements have been satisfied, with safeguards in place to identify any suspicious transactions and to construct suspicious transaction reports.
- The innovative technology arrangement must comply with all qualitative standards and guidelines set by the Malta Digital Innovation Authority.
- A statement showing that the issuer is a fit and proper person; corroborated by the VFA agent.
- A statement stating if there have been any breaches of the Act, the regulations or any rules. This statement should be made by the board of administrators.

The whitepaper must include a detailed description of the past and future milestones including any deliverable in any private placements and its effect from the public offering to the investors.

It is the obligation of the issuer to provide investors with regular and thorough updates on the progress achieved with regards to milestones laid out in the whitepaper to enable the investors to assess the deliverables in the whitepaper. Such updates can be made in the form of public announcements.

In the event where the milestones established are not being met, this must be stated in the public announcement, coupled with a detailed explanation about why they were not met, and the efforts being made in order to meet them. In the event that such delays may affect risk parameters of the project, the whitepaper must be updated accordingly, with investors being informed of their right to opt out.

Upon submission of the compliance certificate by the VFA Agent, it is the obligation of the issuer to ensure the authority is paid all applicable supervisory fees.

The issuer must also ensure that an investor does not invest more than €5,000 in its initial VFA offerings over a 12-month period. (This rule does not apply to experienced investors)

In tandem, the issuers must provide the MFSA with policies regarding its Corporate Governance structure, auditing, AML/MLRO, IT Infrastructure and Cybersecurity; in full compliance with internationally recognised standards.

No issuer can offer a VFA to the public in or from Malta or apply for their admission to trading on a DLT exchange unless the issuer draws up a whitepaper which complies with the requirements of the act and is registered accordingly with the MFSA. An individual who wishes to undertake any of these activities must submit through their VFA agent to the MFSA:

1. The whitepaper and any supplementary documentation, signed by the board of administrators.
2. A copy of the financial instrument test, signed by the board of administrators and endorsed by the respective VFA agent.
3. Confirmation from the systems auditor stating that the issuer's innovative technology arrangements comply with all qualitative standards and guidelines issued by the MDIA.
4. 1 copy of the issuer's audited annual accounts for each of the last 3 financial years.
5. In the event where an issuer forms part of a group, the consolidated accounts for the group of which the issuer is a member for each of the last 3 financial years prepared in accordance with either generally accepted accounting principles and practice or with equivalent standards
6. A certified copy of constitutional documents.
7. The non-refundable registration fee in terms of the VFA regulations.

The MFSA may also request any additional information when reviewing a whitepaper and all applications are vetted by the MFSA who has the sole discretion to either accept or reject all applications.

The whitepaper must convey truthful information in regard to the business representative through words and figures and will act as a source of information about the issuer and its proposed activities. The whitepaper shall:

- Be dated;
- Contain all information stipulated in the First Schedule to the VFA Act;
- Be signed by the Issuer's Board of Administration;
- Include a statement by the issuer's board of administration that the whitepaper complies with all requirements under the act, the relevant regulations and these rules.

The MFSA shall allow information to be added in the whitepaper by reference to one or more previously published documents that have been approved by providing that the information is the latest and most relevant. Where applicable, a cross-reference list must be provided to enable investors to identify information easily and a summary that does not incorporate information by reference.

In the case where a smart contract is being deployed, the issuer must ensure that all the elements of the whitepaper are coded within the respective smart contract. This is applicable to coding for:

1. Transfer limitations
2. Soft cap and hard cap
3. Refund mechanisms
4. Dispute resolutions
5. Burning Protocols

Finally, when conducting an assessment on the suitability of an Issuer's VFA for admission to trading, the MFSA shall decide that a VFA has failed the assessment after considering various circumstances; each of which independently would not lead to that conclusion. Due to this, it is of utmost importance that all information provided to the MFSA is truthful, complete and correct. The MFSA may make admissibility subject to any condition it considers appropriate in the best interest of investors and Malta's financial system.

KEY TAKEAWAYS AND SIMILARITIES

Regarding **CASPs**, there are several similarities between MiCA and the MFSA which are identifiable. These similarities include:

- One must be incorporated as a legal entity to provide crypto-asset services
- CASPs who seek authorisation within the EU must demonstrate to their respective regulator that they possess sufficient capital to operate efficiently and absorb losses. This is also applicable to an orderly wind-down.
- CASPs must operate taking into consideration the best interest of the clients
- Minimum capital requirements in order to operate are similar with slight discrepancies
- CASPs must be fit and proper and all employees/personnel must have the necessary experience, skill and time to fulfil their duties
- Risk management, policies, procedures and governance arrangements are a necessity to operate as a CASP
- CASPs must have safeguards in place to ensure the integrity of private data and information
- CASPs must have systems in place to detect and prevent market abuse

Regarding Issuers, there are several similarities between MiCA and the MFSA which are identifiable. These similarities include:

- One must be incorporated as a legal entity to market crypto-assets
- A whitepaper must be published in order to gain approval from the respective regulator
- The whitepaper must be dated
- Issuers must communicate with their clients honestly, fairly and in a non-misleading manner

- Issuers must implement and maintain control systems to ensure security in aspects like risk management, data and having regular audits
- Marketed information must be presented clearly and consistent with the information presented in the whitepaper
- The issuer must be fit and proper and all employees/personnel must have the necessary experience, skill and time to fulfil their duties

What are the projected Costs involved with licensing and registration?

Not factoring the minimum share capital requirement, MFSA Application fees and annual supervisory fees described above, an applicant needs to estimate costs relating to Legal Fees (VFA Agent), Systems Auditor Fees and Corporate incorporation fees. Once licensed, the licence holder will then need to account for running costs such as salaries.

Rough Breakdown of Projected Fees (Ballparks):

- Cybersecurity and Audit fees: 20-40k (variable upon the size and complexity of the systems)
- Legal fees: 15-30k (variable upon the type of Licence)
- Post-Licensing running/operations costs, including outsourcing arrangements and salaries: 50-100k (variable upon market benchmarks and conditions).

Final Remarks

Getting regulated is not a walk in the park but conversely is a somewhat lengthy and costly process. Having said that, the investment will pay off since security and repute comes with being regulated which in turn will make your project and platform a more attractive and reliable choice. It is worth mentioning that 75% of the hacks in the cryptocurrencies space took place in DeFi so operating in an unregulated space could actually be more costly in the long-run.

ABOUT THE FIRM

Michael Kyprianou Fintech Partners Ltd is a Maltese licensed VFA Agent (virtual financial assets agent) composed of a team of dedicated experts who provide services such as advisory, licensing and registrations of activities related to Fintech, Crypto, Blockchain, Investment Services and other ancillary services including accounting, company incorporations and banking.

MK Fintech Partners is an entity that forms part of the group of companies belonging to the Michael Kyprianou Group. Michael Kyprianou is a Top-Tier International Legal Consultancy Firm with offices in various jurisdictions such as Cyprus, Dubai, London, Greece, Ukraine and Malta. The firm is top ranked in the Legal 500 and according to Gold Magazine is the 3rd largest in size in Cyprus.

Most importantly - We Love Crypto just as much as you do! Get in touch with us on contactmkfintech@kyprianou.com.

Dr Justine Scerri Herrera

Founder & Managing Partner

Dr David Meli

Director & Strategic Partner

Dr Kelly Fenech

Senior Associate

Av Matteo Alessandro

Associate

Max Frilot

Trainee Lawyer (Crypto)