



**SET-UP OF A CRYPTOCURRENCY EXCHANGE
PLATFORM IN SWITZERLAND, MALTA AND
LITHUANIA.**

The adoption of security tokens, or the more commonly used name, cryptocurrencies have been growing in recent years. Since the first cryptocurrency Bitcoin, founded in 2009, many other digital currencies have emerged into the market. According to Reuters, there are over 2,000 types in circulation today. Similar to traditional investments such as equities or stocks, bonds and funds, a marketplace is needed for such securities to be traded – and it is the same for cryptocurrencies. Over the years, multiple cryptocurrency exchanges have emerged where some are regulated and deemed safe, there are others that are anonymous in ownership and physical location. It may be surprising to know that the set-up of cryptocurrency exchanges are not all that complicated. We advise that in order to have a sustainable and long-lasting cryptocurrency exchange, it is important to consider the establishment of the exchange. Not only in terms of reliability but also for tax purposes.

This comparative legal review will look into the set-up of cryptocurrency exchanges in renowned jurisdictions: Switzerland, Malta and Lithuania. Kindly take note that it should be borne in mind that this comparison chart does not purport to be legal advice and all the contents of this comparative chart are drafted on the basis of information provided to us. Readers of this comparative chart should note that at the date of circulation of this comparative chart, the laws and regulations to which this comparative chart makes reference, may be subject to further amendments which will not be reflected in this comparative chart.

	Switzerland	Malta	Lithuania
SET UP OF A CRYPTOCURRENCY EXCHANGE PLATFORM			
Authorising Authority	Swiss Financial Market Services Authority - FINMA	Malta Financial Services Authority - MFSA	Bank of Lithuania
Type of License	FinTech License	Class 1 or Class 4 License in accordance with the Virtual Financial Assets Act (the "VFAA")	i. Crypto Exchange Registration; or ii. Electronic Money Institution ("EMI")
Relevant Activity	<p>The FinTech License is applicable to anyone who is primarily active in the financial sector, who professionally accepts public deposits of up to CHF 100 million or who carries out public offerings to obtain them, but neither invests nor pays interests on the deposits.</p> <p>One of the business models within the scope of the FinTech License is providing wallets for crypto tokens.</p> <p>A crypto token wallet provider falls within the scope of the FinTech License if:</p> <ul style="list-style-type: none"> i. the crypto token wallet provider has a repayment obligation towards the clients; ii. the wallet provider provides brokerage services in relation to foreign exchange and cryptocurrencies; and iii. the wallet provider as a broker, holds clients' assets for a period of no longer than 60 days. 	<ul style="list-style-type: none"> i. Class 1: License holders authorised to receive and transmit orders and/or provide investment advice in relation to one or more virtual financial assets and/or placing the virtual financial assets. Class 1 license holders are not authorised to hold or control clients' assets or money. ii. Class 4: License holders are authorised to provide any Virtual Financial Assets ("VFA") service. Class 4 license holders may hold or control clients' assets or money in conjunction with the provision of a virtual financial assets service. <p><i>(The applicable license depends on whether the company would be holding or controlling clients' assets or money)</i></p>	<ul style="list-style-type: none"> i. Companies that are registered as a crypto-exchange in Lithuania are able to exchange cryptocurrency for and on behalf of the client for a commission fee. Crypto-exchange operators' registration in Lithuania however, does not allow the company to provide money remittance services or exchanges of any kind from or to FIAT currencies. For companies in Lithuania to provide money remittance services they must obtain the licence of a payment institution or e-money institution as required. ii. Payment services including the issuance and redemption of electronic money. <p>N.B. The Lithuanian Authority strongly advises that regulated financial institutions (i.e. payment institution/e-money institution) should refrain from dealing with crypto assets.</p>

<p>Process</p>	<ul style="list-style-type: none"> Register a Company in Switzerland as a company limited by shares (AG), limited liability company (GMBH) or a limited partnership with shares (<i>société en commandite par actions</i>); and ; Apply for a FinTech License with FINMA. 	<ul style="list-style-type: none"> Register a company in Malta as a private limited liability company(Ltd) or a public company (plc); and Apply for a VFA license with the MFSA. 	<ul style="list-style-type: none"> i. Crypto Exchange Registration: <ul style="list-style-type: none"> Register a Company in Lithuania as a private limited liability company (UAB) or a public limited liability company (AB); and Register for a crypto exchange with the Bank of Lithuania. ii. EMI: <ul style="list-style-type: none"> Register a Company in Lithuania as a private limited liability company (UAB) or a public limited liability company (AB); and Apply for an EMI license with the Bank of Lithuania.
<p>Licensing Fees</p>	<p>Licensing may cost up to approx. CHF 50'000.</p> <p>A supervisory levy consisting of a fixed basic levy of CHF 3,000 plus an additional levy, 20% of which is calculated based on the balance sheet total and 80% of which is calculated based on gross income.</p>	<ul style="list-style-type: none"> i. Class 1 license (receiving and transferring orders, consulting on virtual financial assets); Application Fee EUR 6,000; and Annual Supervisory Fee of EUR 5,500 for revenue up to EUR 50,000 and EUR 700 for every EUR 50,000 up to a maximum of EUR 1,000,000. ii. Class 4 license (VFA operations, including holding clients' assets or money); Application Fee EUR 24,000; and Annual Supervisory Fee of EUR 50,000 for revenue up to EUR 1,000,000 and EUR 5,000 for every further tranche of EUR 1,000,000 up. 	<p>License Application Fee costs EUR 1,463.</p> <p>Additional capital reserve – depending on the business model, EUR 250,000 on average.</p>

Minimum Share Capital	A minimum share capital of three percent (3%) of the public deposits received, but not less than CHF 300,000. FINMA might request for additional own equity depending on the actual activity.	A minimum share capital of: i. EUR 50,000 or EUR 25,000 (if the license holder holds a professional indemnity insurance) ii. (ii) EUR 740,000	A minimum share capital of: i. EUR 2,500. ii. EUR 350,000.
Timeline	Preliminary checks and presentation of the licensing documents to FINMA (i.e. preparing the license application and internal audit report by the auditor); Submission of license application; Responding to FINMA's questions and additional requirements; FINMA confirms completeness of application; FINMA grants conditional license; Operational implementation of the conditions set out by FINMA. Confirmation that the conditions are met and license is granted.	<i>Preparatory Phase</i> The applicant must notify the MFSA in writing, through its VFA Agent, of its intention to apply for a VFA license by drafting a statement of intent. The statement of intent should include: i. a comprehensive written description of the proposed structure; ii. the VFA service for which license is being sought, identifying the persons proposed to hold key positions thereto; and iii. a legal opinion explaining how the proposed activity does not fall within the scope of traditional financial services legislation. The MFSA upon receipt of the aforementioned statement of intent shall schedule a preliminary meeting with the Applicant. Following such meeting, the applicant then has 60 days to submit a complete application pack to the MFSA.	Submission of application for an EMI license to the supervisory authority of the Bank of Lithuania, which within 5 days of application shall review the completeness of the application. The Bank of Lithuania's supervisory authority upon receipt of the license application for an EMI and the attached documents presented together shall assess and review the completeness of the application. The supervisory authority shall then provide the applicant of the EMI with comments and additional requests for documents and information, as may be required. Following detailed review of all documents provided by the applicant, the supervisory authority, shall formulate an assessment and analyses in the form of a summary. The summary is then provided to the Bank of Lithuania, for its review which will then issue its the approval or refusal of the license.

		<p><i>Pre-Licensing Phase</i></p> <p>The MFSA shall review the information set out in the application and the completion of the fitness and properness assessment, once satisfied, it will issue an 'in principle' approval valid for a period of three months from the date of issue.</p> <p>Applicants have those three months to finalise and meet the conditions of the pre-licensing in principle approval issued by the MFSA. Upon satisfaction the MFSA will then grant the license accordingly.</p> <p><i>Post-Licensing Phase</i></p> <p>Prior to the commencement of business, the license holders may be required by the MFSA to satisfy a number of post-licensing conditions within a stipulated timeframe.</p> <p>The license holder shall start providing its VFA services within 12 months from the date of issue of the VFA license.</p>	
<p>Appointments required</p>	<p>Licensees are obliged to have the following in place:</p> <ul style="list-style-type: none"> i. representation of at least two persons in Switzerland having joint signatory powers; ii. a management body whose members shall be domiciled in a place which allows them to exercise the effective management of the activities (if not in Switzerland). The management body shall be composed of at least three members (depending on the activities, 1/3 of the members shall be independent); 	<p>The license holder is required to appoint and have in place at all times the following functionaries:</p> <ul style="list-style-type: none"> i. an Auditor; ii. an Anti-Money Laundering Reporting Officer; and iii. a board of administration. <p>The appointment of the following functionaries is optional:</p> <ul style="list-style-type: none"> i. a systems auditor; and ii. a custodian. 	<p>Licensee are obliged to have the following in place:</p> <ul style="list-style-type: none"> i. members of management board; ii. CEO (<i>could be one of members of Management Board</i>); iii. country manager fluent in Lithuanian (<i>not required if CEO meets this requirement</i>); iv. local Anti-Money Laundering Reporting Officer; and v. internal audit officer (<i>may be outsourced</i>).

	<ul style="list-style-type: none"> iii. a body corporate which is also responsible for the ultimate supervision of the business (FINMA has the authority to grant exceptions and/or impose other conditions); iv. a proper internal control system with an independent body from the profit oriented business unit which is responsible for the supervision of compliance and risk management; v. prudent auditors for ongoing activities; and vi. auditors for the licensing process (<i>may be required by FINMA</i>). 		
Final Remarks	The FinTech license provides for attractive corporate tax rates, low taxes in several cantons and the possibility of exemption from dividend tax.	In Malta this licensing process might be lengthy, and difficult to obtain. Additionally, one of the main requirements of having a Maltese company is the opening of a bank account in the name of the company, however most Maltese banks are being reluctant to open a bank account for companies.	It is very important to note that the crypto exchange registration in Lithuania does not allow for any exchanges from or into fiat currencies. In Lithuania, money remittance services are only provided by payment institutions or EMI. However, payment institutions and EMIs in Lithuania are strongly advised not to trade in crypto-assets.



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