

**International
Comparative
Legal Guides**



Practical cross-border insights into fintech law

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Contributing Editors:

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Slaughter and May**

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Strategic Cross-Border Mergers & Acquisitions in the Fintech Sector

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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market, including in response to the COVID-19 pandemic and ESG (Environmental, Social and Governance) objectives. Are there any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications)?

Being one of the front-runners in enacting comprehensive legislation regulating the issue of cryptocurrencies and the provision of crypto-related services, Malta quickly became recognised as one of the main crypto-friendly jurisdictions globally. This builds on Malta's already established presence as a strong player in the financial services industry, with a knowledgeable and experienced financial regulator.

Both the Maltese government and the Malta Financial Services Authority (MFSA) have sought to prioritise the fintech sector over the past years and this has attracted a plethora of licensees to the island. Indeed, despite its size, Malta has the third highest number of electronic money institutions (EMIs) in Europe.

Despite the economic impact of the COVID-19 pandemic, Malta's quick and strict response reaped its benefits and the Maltese economy recovered strongly. The pandemic has thus not hindered Malta's plans for growth as a jurisdiction and has not dampened interest in Malta as a jurisdiction of choice for prospective licensees and operators.

The MFSA has also reiterated the importance of ESG considerations in business strategies and encourages firms to be proactive in integrating ESG factors into their investment processes. On a more national level, the Maltese government launched Malta's first ESG portal, to facilitate local and foreign investors' access to data measuring the level of importance companies are giving to ESG.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

Following the coming into force of the virtual financial assets (VFA) framework, which sought to regulate the issue and provision of services in relation to virtual currencies, there are at present no express regulatory prohibitions with regard to fintech businesses seeking to set up in Malta.

Fintech businesses are thus advised to consult local counsel with regard to the regulatory implications, if any, of their business model.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Malta offers different funding opportunities for businesses in various sectors. Malta Enterprise, which is Malta's economic development agency, offers numerous support measures particularly to assist start-ups. Please see question 2.2 for further information on such measures.

Following the coming into force of Regulation (EU) 2020/1503 regulating European crowdfunding service providers, the MFSA also issued its crowdfunding rules with the aim of creating clear rules for crowdfunding platforms and marketing communications. These rules are intended to safeguard not solely entities seeking to raise funds through crowdfunding but also potential investors.

Local entities can also seek further funding by issuing equity or debt securities on the local Malta Stock Exchange (MSE), or on Prospects MTF. The latter provides a cost-effective opportunity for small and medium-sized enterprises (SMEs) to raise capital by issuing bonds or equity.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

Malta offers different types of incentive schemes and support measures, particularly assisting start-ups and SMEs.

Malta Enterprise has an ongoing seed and growth funding scheme called "Business Start" for small start-ups operating in certain areas, including software development, through which applicants can receive an initial grant of up to €10,000 to help develop their business, with ongoing support reaching as high as €200,000.

Another scheme offered by Malta Enterprise is the "Business Development" initiative, which offers tax credits or cash grants to new businesses as well as for the expansion or transformation of local development. Eligible projects include those relating to the digitisation of processes and the development of digital service and systems (including video games and entertainment systems) intended for international markets.

Other support measures offered by this agency include: Start-Up Finance, through which Malta Enterprise provides support linked to private equity, wage costs, procurement of tangible and intangible assets, working capital and crowdfunding;

and the Patent Box Deduction scheme, which establishes a fiscal regime for income arising from patents, similar intellectual property (IP) rights and copyrighted software.

Companies may also be eligible to benefit from the SME Fund, which is an EU grant scheme designed to help SMEs protect their IP rights.

Malta also offers different tax incentives to employees working in certain positions and with companies in specific industries, including gaming, financial services and aviation. Through such schemes, eligible employees would benefit from a flat rate of 15% tax on their employment income.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

The main applicable laws regulating initial public offerings (IPOs) in Malta include the Financial Markets Act (Chapter 345 of the Laws of Malta), the Maltese Companies Act (Chapter 386 of the Laws of Malta), the MiFID II Directive (2014/65/EU), the Transparency Directive (2004/109/EC) and the Prospectus Regulation (2017/1129/EU).

Companies seeking to issue securities to the public are required to notify the MFSA for authorisation of admissibility of the equity securities to listing, as well as to the MSE to have those securities admitted to listing and trading. Applicants are required to engage a sponsor, a duly authorised investment services firm, whose role is to guide the applicant throughout the admissibility process and to liaise with the MFSA on the applicant's behalf.

The prospectus, which must be drafted in line with the requirements of the Prospectus Regulation, is submitted to the MFSA for its review and approval. In certain cases, an exemption from the obligation to publish a prospectus would apply; this includes cases where the offer is solely made to qualified investors (as defined under MiFID II), when the offer's minimum consideration paid per investor is at least €100,000, and in the case of an offer where the total consideration of securities being offered in the EU or EEA does not exceed €5 million. A prospectus would nevertheless be required to seek listing on the MSE's Official List.

In order to conduct an IPO, the following conditions must also be satisfied:

- the applicant must be a public limited liability company duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment and operating in conformity with its memorandum and articles of association or equivalent constitutional document;
- the applicant must have a minimum issued share capital of €1 million fully paid up;
- the securities to be offered must be freely transferable and fully paid up;
- unless otherwise approved, the applicant must have published or filed audited financial accounts for the last three financial years preceding the application for admissibility to listing; and
- at least 25% of the class of shares in relation to which the application is being made must be in public hands.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

None that are worthy of reporting.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

Malta offers a comprehensive regulatory framework applicable to different types of businesses operating in the fintech sector.

Malta enacted an innovative legal framework regulating virtual currencies in 2018 (defined as VFAs), distributed ledger technologies (DLTs), including blockchains, initial coin offerings (ICOs), and providers offering services in relation to VFAs. The legislator also created a mechanism regulating innovative technology arrangements (ITAs), such as smart contracts, and innovative technology service providers (ITSPs). Further information on this legal framework can be found in question 3.2.

The regulation of cryptocurrencies came on the back of the regulator's years of experience in licensing financial institutions including payment services providers (PSPs) and EMIs. Over the years the MFSA has also sought to adapt to the emergence of new technologies and the need to introduce requirements and guidelines to cater for the risks and realities faced not only by entities operating in the fintech sector but licensees in general.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

The VFA framework came into force in 2018 to regulate the issue of cryptocurrencies and the provision of services in relation to cryptocurrencies. The innovative legal framework also sought to go beyond the concept of cryptoassets and created a certification mechanism for ITAs, such as smart contracts.

The VFA Act created the Financial Instrument Test, which is intended to assess whether a DLT asset qualifies as a virtual token, a financial instrument, electronic money or VFA.

Where a DLT asset qualifies as a virtual token, its offering is not regulated under Maltese law. On the other hand, the issuing of VFAs and the offering of services in relation to VFAs are regulated under the VFA Act.

The issuing and offering of services in relation to financial instruments and electronic money are primarily regulated under MiFID II and the Electronic Money Directive, both as transposed under Maltese law.

Issuers of VFAs and VFA service providers are required to obtain authorisation from the MFSA prior to commencing any activity and are also deemed to be subject persons for AML/CFT purposes.

As the EU's Markets in Crypto-Assets Regulation (MiCA) is expected to come into force in the relatively near future, issuers and service providers will be expected to line up with its obligations and requirements.

However, as the Maltese VFA framework was based on MiFID, and MiCA has been drafted in the same spirit, the MFSA has noted that there are very few discrepancies between the VFA Act and MiCA. Indeed, in certain instances, the current Maltese regime was deemed to be more rigid than what is proposed under MiCA. Since the impact from the regulation's implementation is expected to be minimal, this is expected to offer a smooth transition not just for the MFSA but for licence holders under the VFA Act as well.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory ‘sandbox’ options for fintechs in your jurisdiction?

Malta has always had a “first-country” approach to innovative technologies, and it has invested in continued development within numerous technological sectors. Some notable examples include the AI Taskforce established to develop a national AI Strategy that is ethically aligned, transparent and socially responsible.

The MFSA also continues to build on technological developments, as can be seen through the recent public consultation regarding the regulation of Non-Fungible Tokens (NFTs) to establish stakeholders’ opinions on whether NFTs should fall within the regulatory remit of the VFA Act.

Different regulators have also introduced different types of regulatory sandboxes to attract further interest from the fintech sector:

(a) The Malta Gaming Authority’s Sandbox

In January 2023, the Malta Gaming Authority (MGA) revamped its sandbox which allows for the acceptance of VFAs, virtual tokens and the use of ITAs by authorised persons licenced by the MGA.

Licensees are thus required to seek prior approval from the MGA before introducing the use and acceptance of DLT assets within their operations. For stability within exchange rates, the policy establishes different rates to follow in unique situations.

Authorised persons must have policies and procedures in place regarding wallet management to address wallet structure and permissions on wallets holding player funds. Proper record-keeping must also be ensured to cover each player, their wallet address and each transaction. Such information must be secure and easily made available to the authorities. Additionally, strict AML/CFT policies and procedures are required to ensure safe use of the DLT asset.

(b) The Fintech Regulatory Sandbox

The MFSA launched its own Fintech Regulatory Sandbox in July 2020 allowing fintech operators to test their innovations within a regulatory environment for a specified period of time and under certain prescribed conditions. The sandbox is open to fintech service providers and fintech suppliers, accepting start-ups, technology firms and established financial services providers that approve of technologically-enabled innovation in their business models, applications or products.

The regulatory sandbox is intended to target technologically-enabled financial innovation that could result in new business models, applications, processes or products with an associated material effect on financial markets and the provision of financial services.

Since its launch, the sandbox has seen increased interest with numerous proposals received with diverse innovative technologies for financial services, covering a range of investment service products, market infrastructures and regtech solutions.

(c) The ITA Sandbox

In May 2021 the MDIA launched the Technology Assurance Sandbox (MDIA-TAS) to complement the MDIA’s ITA full certification framework. Its aim is to be a key utility for start-ups and smaller companies developing solutions based on innovative technologies, by providing a safe environment

to develop their technological solution. The MDIA-TAS aims to ensure that regulatory certainty can be given to ITAs developed by small entities and that a balance is reached between maintaining full certification and the adopted “high barrier of entry” approach, while addressing financial and technical barriers for smaller entities.

The sandbox framework is intended to guide applicants in the proper development of their solution within the lines of recognised international guidelines and standards, and other regulatory and legal obligations. Applicants are guided for a maximum period of two years, at the end of which they will be in a position to obtain full MDIA certification.

To participate in the MDIA-TAS, applicants must prove to the authority that their ITA has a reasonable element of substance relevant to Malta, either by proving that the development of the ITA will be carried out in Malta or that its operations will be carried out in or from Malta.

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

Fintech businesses seeking to offer services in or from Malta must primarily verify whether the nature of their activities is regulated in Malta.

In certain cases, a notification may need to be filed with the Maltese Foreign Direct Investment Office prior to being able to setup a company in Malta. Seeking advice from local counsel on both fronts is thus recommended.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/ transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

The collection, use and transmission of personal data is regulated in Malta by the Data Protection Act (Chapter 586 of the Laws of Malta) and the Subsidiary Legislation issued thereunder, as well as by EU legislation, including the General Data Protection Regulation (GDPR).

The respective data protection legislation applies to fintech businesses in the same manner as it applies to other businesses in Malta.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

Malta’s Data Protection Act applies to organisations established outside of Malta, where such organisations process personal data of data subjects who are in Malta and where the processing activities are related to (i) the offering of goods or services to data subjects in Malta (irrespective of whether a payment is required), or (ii) the monitoring of the data subjects’ behaviour taking place in Malta.

International data transfers outside of countries within the EU or EEA are restricted as per the restrictions codified within the GDPR.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

Breaches of data protection law can lead to fines reaching up to €20 million or 4% of global turnover (whichever is the highest), and can sometimes also be a criminal offence leading to imprisonment.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

The MFSA has issued a guidance paper on technology arrangements, ICT and security risk management and outsourcing arrangements for all financial services authorised licensees. Offering guidance in multiple aspects such as AI, cloud-sharing services and resource pooling, the MFSA obliges licence holders to ensure the existence of an adequate internal governance and control framework through a strong ICT strategy covering ICT risk management. Such a strategy should implement the three lines of defence model and ensure proper record-keeping to facilitate improvement through its implementation and monitoring.

Licensees are also required to have specific policies in place (particularly with regard to business continuity and disaster recovery), and depending on the business model, these should also include a cybersecurity framework. Additional requirements apply for entities authorised under the VFA Act.

The MFSA's implementation of such requirements came in anticipation of the coming into force of the EU's Digital Operational Resilience Act (DORA), which aims to strengthen cybersecurity regulations within the EU.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

While certain companies operating in the fintech sphere were already deemed to be subject persons under local legislation, on the coming into force of the VFA Act the regulator also sought to extend the definition of "subject person" to capture VFAs and the operations of VFA service providers, VFA agents and issuers of VFAs. This was further supplemented by specific implementing procedures issued by the local AML authority, the Financial Intelligence Analysis Unit (FIAU), which set out specific additional AML rules to regulate such entities.

The introduction of these new rules preceded the coming into force of the EU's 5th Anti-Money Laundering Directive, which sought to regulate certain cryptocurrency-related services.

The introduction of such local legislation was not only intended to provide a proper AML framework for issuing or offering services in relation to virtual currencies but was also intended to ensure that Maltese AML laws remain abreast of ever-evolving technologies and the ways in which such technologies could be used for money laundering and the funding of terrorism.

This has also meant that operators seeking to operate in or from Malta are required to adhere to such rules, backed by the experience gained by the local regulator over the past years. Although fintech start-ups need to consider the costs they have to bear to be compliant with Maltese and EU AML laws, the rules are ultimately intended to safeguard the subject persons themselves from being used as a vehicle for money-laundering and the financing of terrorism.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction (for example, AI)?

The enactment of the VFA framework also saw the introduction of the Innovative Technology Arrangements and Services Act (Chapter 592 of the Laws of Malta) and the creation of the Malta Digital Innovation Authority (MDIA) as the responsible authority in relation to the certification of ITAs.

The Act defined ITAs as:

1. software and architecture that are used in designing and delivering DLT;
2. smart contracts and related applications, including decentralised autonomous organisations; and
3. other ITA that may be designated by the Minister, on the recommendation of the Authority.

An ITA can be certified for one or more specified purposes, being: qualities; features; attributes; and behaviours.

Separately, the concept of AI technologies has been on the Maltese government's agenda in recent years and a taskforce was established with the goal of AI integration, legalisation and research. Although no local piece of legislation has yet been issued with regard to the regulation of AI, the EU has issued its proposal for a regulation laying down harmonised rules on AI.

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

Employment in Malta is regulated by the Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta) and its subsidiary legislations. The act protects the employees' right to full wages without deductions, to be free from unfair treatment at the workplace and from any harassment or discrimination. Furthermore, it establishes the minimum rights granted to employees, minimum information to be provided to employees and specific regulation on unfair dismissals.

Although there are no particularly onerous requirements or restrictions, it is important to ensure that employment agreements are adequately drafted not only to ensure that their provisions are in line with Maltese law, but also to ensure a clear working relationship between the employer and employee starting from the moment the employee is hired to beyond when the employee leaves the company.

5.2 What, if any, mandatory employment benefits must be provided to staff?

Maltese legislation provides employees multiple guaranteed benefits, including weekly allowance and minimum days of paid leave for all employees. Recent EU legislation transposed to Maltese law ensured that workers satisfying certain conditions are deemed employees regardless of their self-employed status to protect them from abusive tactics by their employers.

The employee is entitled to a notice period before termination, unless otherwise not required, and minimum information to be provided within the contract or through a separate document satisfying the employee's right to be fully informed of the employment conditions.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

Since Malta is an EU Member State, all EU citizens are entitled to reside and work in Malta as part of the free movement pillar. EU nationals seeking to reside in Malta for more than three months are required to apply for a residence permit.

On the other hand, non-EU nationals must obtain a single permit (joint employment licence and residence permit) that is endorsed by the employer before being able to legally reside and take up employment in Malta. However, in most cases, employers are required to prove that they have first sought to recruit a Maltese or EU national for that position; when this search proves to be futile a non-EU national can then be employed in that position and the company can proceed to apply for the single permit on the employee's behalf. Exemptions from this requirement apply in certain cases.

A similar exemption also applies in the case of the Key Employee Initiative, which is a special work and residence programme aimed for highly-specialised third-country nationals seeking employment in Malta. The scheme applies to managerial and highly-technical posts earning a minimum of €30,000 annually and is intended to offer a fast-track application for such positions.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Innovations and inventions tend to be protected in Malta primarily through three distinct forms of IP rights, namely (i) patents, (ii) trade secrets, and (iii) copyrights.

Subject to a registration process, patents can be used to protect innovations and inventions, which can be embodied within a product and/or a process. For patent protection eligibility of an innovation/invention, the respective invention must be “new”, must not be obvious to a person skilled in the art (“inventive step”) and must be capable of industrial application. As “software as such” does not fall within the ambit of patent eligibility in Malta, patents tend to have little relevance to fintech businesses in Malta.

Trade secrets can be used to protect information which is considered to have a commercial value in view of its secrecy. For trade secret protection to apply, the following conditions must be satisfied:

1. the information must be secret, in the sense that it is not, as a body of information or in the precise configuration

and assembly, generally known among or readily accessible to persons within circles that normally deal in the kind of information in question;

2. the information has commercial value since the information is secret; and
3. the information has been subject to reasonable steps under the circumstances, by the person lawfully in control of the secret, to keep the information a secret.

Copyrights are also very common forms of IP protection for innovations and inventions in Malta and specifically for fintech businesses; it must be noted that “computer programs” are considered “literary works” subject to copyright protection.

In Malta, any work which is eligible for copyright protection is automatically protected by copyright without the need of any formality, such as any registration process.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

Ownership of IP gives the proprietor exclusive rights over the respective IP.

Ownership of certain types of IP is conferred in Malta through a registration process, such as patents, (registered) designs, and trade marks. Ownership to other types of IP rights may arise in Malta absent any registration formalities, including for example copyrights, trade secrets and rights to unregistered names and signs in terms of the Maltese Commercial Code.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

For an IP right to confer protection in Malta, it must be a type of IP that is recognised in Malta and/or is registered in Malta.

However, it must be noted that as an EU Member State, EU IP rights (such as EU Trademarks and EU Design Rights) do confer protection over the territory of Malta.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

Exploitation/monetisation of IP in Malta can occur in any way that is not considered a breach of Maltese Laws (which are unrelated to IP). From an IP point of view, the only rules or restrictions that need to be followed is that a contract in writing is necessary.



Dr. Ian Gauci is the Managing Partner of GTG and oversees the Technology, Media and Telecommunications (TMT) practice, and the Legal Futures and Innovation & Legaltech sectors. He is a market leader in relation to technology and fintech issues. He has worked extensively on blockchain and digital assets, and is one of the foremost blockchain and cryptocurrency lawyers in Malta and globally, highly regarded for his extensive experience in, and deep knowledge of, blockchain, smart contracts and digital assets.

He is also deemed to be one of Malta's leading technology lawyers advising and providing consultancy on legal, regulatory as well as policy matters, and has also assisted a wide array of authorities on issues including electronic signatures, regtech, cybersecurity law, AI, IoT and technological convergence.

Dr. Gauci has co-authored, amongst others, the Maltese Electronic Communications Framework and the Maltese Digital Innovation Laws, and lectured Legal Futures and Technology at the University of Malta.

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Having joined the firm in 2011, she has assisted a vast range of corporate clients throughout the lifetime of their company, starting with incorporation or redomiciliation in Malta and providing support on numerous matters, including share transfer agreements, shareholders' agreements, dissolutions, and ensuring companies remain compliant with their ongoing corporate obligations.

Dr. Abela Grech has assisted numerous clients to successfully obtain a licence from the MFSA. She also regularly advises large-scale corporations on the setting up and regulatory implications of share option schemes.

She also works closely with the firm's fintech team on matters related to virtual currencies and DLTs, including in respect of security token offerings, virtual currency-related activities requiring investment services licensing and investment funds investing in virtual currencies.

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Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Technology Sourcing
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms