The Legal 500 Country Comparative Guides

Malta: Blockchain

This country-specific Q&A provides an overview of blockchain laws and regulations applicable in Malta.

For a full list of jurisdictional Q&As visit here
1. **Please provide a high-level overview of the blockchain market in your jurisdiction. In what business or public sectors are you seeing blockchain or other distributed ledger technologies being adopted? What are the key applications of these technologies in your jurisdiction?**

Over the last few years Blockchain technology has immersed itself across many different markets, be it Health Care, Supply chains, Data Management, Registries, and Financial Markets. Some advantages of Blockchain technology adoption in these sectors include:

- **Registries:** Digitisation of registries, such as Land Registry or Intellectual Property Registers can ensure authenticity of records and ownership, due to certain key features of the technology (time-stamps). Notably, the Maltese Government has digitised the Adoption Process through DLT and has transferred its Land Registry records on the Blockchain already. It is now looking to digitise the Malta Business Registry and IP register on the Blockchain!

- **Due to the technology’s features providing better transparency and traceability,** Blockchain was truly revolutionary for Supply Chains - many issues surrounding trust were solved or improved resulting in some of the biggest developments and adoption in this sector.

- **For the Banking Sector,** Blockchain has proved that it can reduce operational and administrative costs when processing payments, reduce the risk of fraud thereby providing more security, and provide more reliable audit trails due to better traceability. The technology enables new ways of managing money and facilitating payments resulting in more seamless secure transactions. Furthermore, when it comes to remittances and microloans this technology’s infrastructure can do a world of good and result in increased global financial empowerment and operational efficiency.

- **In Capital markets,** Blockchain can help re-organise the value chain and players thereby shifting the current scenario from its present chess game infrastructure to a plug-in-and-play scenario. The automation of transactions will also significantly increase the speed of trade deliveries. Due to the capital markets scene being so fragmented, interoperability during these transitions is of prime importance.

The Malta Financial Services Authority (MFSA) has published a consultation document and received feedback from market participants, on the primary issuing and secondary trading and settlement of financial instruments which qualify as transferable securities (in terms of the Markets in Financial Instruments Directive) thereby paving the way to provide some legal direction and certainty in the realm of Security Token Offerings and Exchanges. Capital Markets consist of many different players (from the issuer to CSDs, Banks and exchanges) so it is important that there is a licensed entity which offers its services on a DLT platform at every stage for such ecosystem to flourish. One advantage of being part of the EU is that if one would like to issue one’s security token on the blockchain from Malta, one could use a licensed CSD in France or some other EU jurisdiction, if no such service on DLT from Malta exists. Once Malta also shifts its Malta Business Registry to DLT, the process of STOs will become seamless.
A few companies based in Malta worth mentioning are Okex Exchange, Exante, which is one of the largest global leading investment brokerage firms which also deal in cryptocurrencies and who are connected to Stasis (the euro backed cryptocurrency) and Neufund (a blockchain-based equity fundraising platform allowing companies to raise money by issuing tokens like shares).

- Money – A number of organisations have issued tokens in the hope that they would in time be perceived as having value and be used as a medium of exchange. There are a number of ‘payment’ type tokens such as Bitcoin and Ethereum which are volatile in nature and a number of Stablecoins (such as USDT, Tether, Stasis and Digix) which derive their stability from an underlying asset such as fiat currency or gold. Due to the emergence of new asset classes, combined with an increase in appetite for some of the top cryptocurrencies and the launch of Libra, we are seeing many Central Banks around the world looking into Central Banks Digital Coins (CBDCs). Since Malta is a member of the EU, the shift to CBDCs lies in the hands of the European Banking Authority (EBA).

2. **To what extent are tokens and virtual assets in use in your jurisdiction? Please mention any notable success stories or failures of applications of these technologies.**

The most prominent and successful tokens/virtual assets which where launched from Malta are Stasis (STSS Malta Ltd) which is a Euro backed stable coin proven to be successful and in fact have a blockchain balance of over thirty (30) million Euro and chiliz (CHZ) token which is a Football fan token which offers the opportunity for fans to participate in fan-led decisions through a mobile voting platform. Chiliz token have a market cap of over 50 million and are partners with some of the biggest football team names such as FC Barcelona and Juventus. Malta is also home to Exante which is an Investment Services Firm which trades all types of cryptocurrencies and is the founder of some very highly lucrative Bitcoin and XAI funds.

3. **Has COVID-19 provoked any novel applications of blockchain technologies in your jurisdiction?**

The Government has launched various initiatives and campaigns promoting fintech and blockchain adoption especially in the e-commerce sector. In June 2020 the Government announced that it will provide up to 10,000 euro to business investing in digital promotion campaigns. The purpose of this is to incentivise more companies to do away with traditional retail channels and come up with more original business strategies and try and utilise and leverage online services and new technologies.

The Ministry of Economy in Malta has also launched a Start-Up Finance Scheme, which offers tech based start-ups up to 400,000 working capital in order to provide the necessary impetus for start-ups to take the leap and implement their projects and ideas and provide an optimum ecosystem for start-ups to operate and flourish from Malta.
A recent Fintech start-up which was financed through the abovementioned scheme is Trust Stamp who’s mission is to create and deploy artificial intelligence solutions to empower financial and societal inclusion, which ranges from providing account access and fraud detection for bi banks, to working with Mastercard to creating identities for 100 million undocumented people throughout Africa to allow access to vaccines, medical aid and care.

4. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?

Yes, the Maltese Parliament passed three new pieces of legislation in November 2019 which together form a comprehensive framework regulating the Cryptocurrencies and Blockchain space. These Acts comprise of the following:

1. The Virtual Financial Assets Act regulates Issuers and Service Providers:
   
   ○ Issuers who wish to issue a new token or coin on the market need to comply with Whitepaper requirements and then register their whitepaper with the competent authority who will then in turn be responsible for vetting the whitepaper and ensuring that certain controls and key persons are in place, for example, in relation to compliance, AML and investor protection.  
   ○ The Act also regulates Virtual Financial Assets Service providers such as Custodians, Brokers and Exchanges. The licence requirements and processes are similar to those pertaining to investment services and financial services licences, whereby, to obtain such licences, you need to have some local substance, key roles in place and good internal corporate governance policies.

2. The Malta Digital Innovation Authority Act establishes the Malta Digital Innovation Authority (MDIA) which is empowered to certify a platform’s innovative technology arrangements (ITA) that is the infrastructure and technology behind the platform using DLT, smart contracts and wallets.

3. The Innovative Technology Arrangements and Services Act (ITAS) sets out the regime applicable for the certification of the ITAs and registration of technology service providers. One can opt for their technology arrangements/infrastructure to get audited and certified on a voluntary basis or else on an obligatory basis (if applying for a licence or issuing a new token/coin on the market). Malta has put testing the technology at the forefront when it comes to Blockchain implementation and adoption, so as to ensure quality and security. In addition to these three pieces of legislation, the Malta Financial Services Authority (MFSA) and the Malta Digital Innovation Authority (MDIA) are continuously publishing guidelines and consultation papers to keep key participants and enthusiasts in the market informed and engaged.
Lastly, the regulator, the Malta Financial Services Authority (MFSA) is launching a Fintech Hub and Sandbox Environment to support and enable financial services providers to infuse technology in the products and services they would like to offer.

5. **What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?**

The Government of Malta and key relevant institutions are open, curious but somewhat cautious in their attitude towards Blockchain technology. I think they have done a good job in regulating the space and providing the public (especially investors) with a functioning tripartite regulatory framework which covers all aspects, from certifying the technology to having good corporate governance. In recent months there has also been the formation of certain bodies and committees to continue to research and address certain issues and create new initiatives. For example, the Malta Chamber of Commerce set up a new Business Committee for licensed Virtual Financial Assets Agents (VFA agents are specialised licensed persons which an applicant must engage in order to assist with the licensing and registration procedures) to be the buffer between the market, the regulators and the legislators. Once the law was put into practice, licensed VFA Agents realised that there were a few amendments which were needed in order to remove some of the barriers to entry, based on issues faced by some organisations such as start-ups when applying for a licence.

The Ministry for Digital Economy also formed a ‘Think Tank’ Taskforce in June 2020 to address and implement key initiatives relating to adopting new technologies such as Blockchain to cut costs and boost revenues in the Economy.

The University of Malta and the Malta Information Technology Agency (MITA) also offer Scholarship schemes to attract local and international talent with a focus on Blockchain. Furthermore, the University of Malta also offers Master’s Degree courses on Blockchain and DLT. Investing in educating future generations in Blockchain & DLT projects is the vision that the Maltese Government and University have about this space.

6. **Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox)?**

Yes, there are a few.

The Malta Digital Innovation Authority has just published a consultation paper about setting up a Tech-Driven Sandbox environment specifically for Blockchain and DLT based business models. The sandbox will complement the Malta Digital Innovation Authority’s certification arrangements. Feedback from stakeholders closes on 31 July 2020.

The Malta Financial Services Authority (MFSA) is launching a Fintech Sandbox and Fintech
Innovation Hub in July 2020 providing firms with a platform where they can explore and test their business concepts and solutions with well-proportioned safeguards in place. The purpose of this is to achieve a win-win situation, whereby businesses will be given the opportunity to test their concepts and the MFSA (the regulator) can build and diversify its capacity and experience by monitoring and supervising such environments and business models.

The Malta Innovation Technology Hub (MITA) is an agency formed to help kickstart early stage start-ups and help accelerate and fund certain projects if they get through to the screening process.

The Ministry of Economy in Malta has also launched a Start-Up Finance Scheme, which offers tech based start-ups up to 400,000 working capital in order to provide the necessary impetus for start-ups to take the leap and implement their projects and ideas and provide an optimum ecosystem for start-ups to operate and flourish from Malta.

7. **Have there been any recent governmental or regulatory reviews or consultations concerning blockchain technology in your jurisdiction and, if so, what are the key takeaways from these?**

Yes, there have been many consultation papers and guidelines published by the Malta Financial Services Authority (MFSA) and the Malta Digital Innovation Authority (MDIA) over the past months and years. Namely, guidelines addressed to Systems Auditors - who are entrusted with auditing the technology arrangements (e.g. Smart Contracts, wallets, blockchain etc.) before certification by the MDIA is given.

Additional guidelines have been issued and addressed to licenced Virtual Financial Assets (VFA) Agents, who are persons with whom firms in this space must engage for assistance if they are looking to get regulated in Malta (e.g. issuers and service providers) and are seen as a sort of the ‘mano lungo’ of the regulator.

Separate guidelines have been issued for Token Issuers and Service providers which provide some insight about what is expected from them when it comes to drafting and registering whitepapers and applying for a licence.

There was also a consultation paper released about Security Token Offerings which covered a myriad of technical areas such as classification of STOs, STO issuance and STO exchanges (trading venues).

There have also been other consultation papers published by the relevant authorities about regulatory sandbox environments for firms interested in Blockchain and Fintech applications.
8. Has any official guidance concerning the use of blockchain technology been published in your jurisdiction?

Yes, there have been specific regulations drafted to cover activities of different key market players, namely; issuers, service providers and VFA Agents. There have also been guidance papers issued for Systems Auditors who are the persons entrusted with auditing and certifying technological arrangements (blockchain, wallets, smart contracts). There has also been a consultation paper issued in relation to Security Token Issuers and persons exploring creating DLT based securities exchanges.

These publications and regulations can all be found on the website of the Malta Financial Services Authority (Fintech and Virtual Financial Assets section).

9. What is the current approach in your jurisdiction to the treatment of cryptocurrencies for the purposes of financial regulation, anti-money laundering and taxation? In particular, are cryptocurrencies characterised as a currency?

Financial Regulations

While cryptocurrencies, even popular ones such as BTC and ETH, are not a legal tender under Maltese Law, they are recognised by the Government as a medium of exchange, a unit of account, or a store of value.

When a token issuer wants to issue a new token on the market from Malta, they must first classify what their token is according to the token categorisation test (called financial instrument test). The type of classification will determine to which laws the token will be subject. For example, if the token is a Stablecoin backed by euro or dollar (such as Stasis or Tether), then the token and company will be regulated by financial institution regulations. If the token represents an asset found in the financial instruments list in the Markets in Financial Instruments Directive (MIFID), such as gold (eg DIGIX token), then such token issuance will be regulated by MIFID. If the token is not backed by or pegged to fiat currency and is not an asset found in the financials instrument list in MIFID but can be traded on secondary markets (such as Bitcoin), then it will be called a Virtual Financial Asset (VFA) token and be subject to the VFA Act (see above). A pure utility token which cannot be traded on secondary markets is exempt from regulations.

In Question 12 below you can see a description of the four token classifications according to Maltese law.

AML
The cryptocurrencies regulations (specifically the VFA Act) do address AML/CFT concerns. The Maltese law states that all service providers (such as Crypto exchanges, wallet providers, brokers, asset managers) need to comply with the 5th Anti Money Laundering Directive. Token issuers also need to abide by these regulations when raising funds. Malta’s legal regime also stipulates that service providers need to have an MLRO and Compliance Officer in place, whose responsibility will include abiding by relevant Anti-Money laundering regulations. The Financial Intelligence Analysis Unit (FIAU) also mandates issuers of virtual financial assets and service providers to implement tools that enable tracing the origins of cryptocurrencies (crypto-forensic tools).

Tax perspective:

In November 2018, the Malta Commissioner for Revenue issued the following tax guidelines on the income tax, stamp duty and Value Added Tax (VAT) treatment of transactions or arrangements involving DLT assets:

- **Raising funds:** In relation to initial coin offerings (ICOs), the guidelines state that proceeds from token generation events will not be taxed.
- **Income Tax:** For the purposes of the guidelines, tokens are divided into financial tokens, utility tokens and hybrid tokens (bearing characteristics of both). In relation to financial tokens (security tokens), for income tax purposes, returns derived from security tokens - whether in crypto or in fiat - should be treated as income. In relation to the transfer of tokens, the tax treatment depends on whether the transfer is a trading transaction or the transfer of a capital asset. Trading profits are taxable; however, capital gains are taxable only insofar as the token meets the definition of a ‘security’.
- **VAT:** In terms of security token offerings aimed at raising capital, this will not give rise to any VAT implications, since the raising of finance itself does not constitute the supply of goods or services.

10. **Are there any prohibitions on the use or trading of cryptocurrencies in your jurisdiction?**

**Listing**

If one would like to list one’s token on an exchange, one would first need to obtain a legal opinion from a local licensed Virtual Financial Assets (VFA) Agent (such as MK Fintech Partners Ltd) to determine what the token/coin classifies as under local laws. Token classification is important for assessing on which exchange one can legally list one’s token. A security token cannot be listed on a non-security token platform and vice versa. There are two different types of crypto exchanges: securities token exchanges and Virtual Financial Assets (VFA) Exchanges (crypto exchanges, such as Binance or Kraken).

**Licensing an Exchange**
To operate an exchange from Malta one must first apply to the Malta Financial Services Authority (MFSA) in order to obtain licence approval. The type of laws which the exchange will be subject to will depend on the type of activities the company will offer. Crypto to fiat, fiat to crypto and crypto to crypto exchanges listing and trading tokens which are not securities will be subject to the Virtual Financial Assets (VFA) Act and Virtual Financial Assets (VFA) regulations for service providers. In addition, each exchange may have its own listing requirements.

Licensed exchanges will need to adhere to certain licensing requirements imposed on them by the regulator. For example, there are some additional obligations which exchanges will need to abide by when onboarding and offering their services to retail (not professional) clients since these persons will need more protection. Also, if an exchange is outsourcing custody of virtual assets to a third party, then it must engage a custodian licensed in the EU/EEA to store such virtual assets.

Tax

VAT is not applicable to transactions exchanging fiat to cryptocurrencies.

11. **To what extent have initial coin offerings taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs?**

The Maltese authorities have been rather stringent on regulating Token Issuers. A token issuer must first get a local legal opinion assessing and classifying its token. Secondly, an issuer must engage a licenced VFA Agent to assist in drafting and registering its whitepaper in line with local whitepaper registration requirements and ensure compliance with local AML regulations when it comes to raising funds. VFA Agents guide issuers through the above described procedures and requirements and ensure that all milestones promised to investors in their whitepapers are executed in an accurate and timely manner. Lastly, the regulator has imposed some caps on the amount of funds which can be raised from retail investors with a view to protecting the retail market in this relatively new emerging space. This approach may not attract a very large amount of token issuers/coins since it is not the lightest or cheapest regime in comparison to perhaps some of our competitor jurisdictions, however, from a market integrity and investor protection standpoint any tokens launched from Malta will definitely stand to gain.

12. **If they are permissible in your jurisdiction, what are the key requirements that an entity would need to comply with when launching an ICO?**

Yes, launching an ICO from Malta is possible within its new regulatory framework. An issuer must first form and incorporate a new Maltese entity, then move to classify the token (in accordance with the Financial Instrument Test created by the regulator) and lastly draft and register a whitepaper in line with the whitepaper requirements found in the VFA Act, which include giving information about the team, project, technology, type of token, risk
disclosures, soft caps and hard caps, refund mechanisms in case soft caps are not reached, price, if the token will be listed and can be traded, and more. Once the whitepaper is drafted and vetted by a VFA Agent, it can then be registered with the competent authority (MFSA). Other requirements include raising funds in compliance with AML regulations (5AMLD). One is also required to have a Compliance and MLRO Officer to ensure that funds are being raised in an AML compliant manner.

13. Is cryptocurrency trading common in your jurisdiction? And what is the attitude of mainstream financial institutions to cryptocurrency trading in your jurisdiction?

There are a few big providers which have chosen Malta as their base (such as Okex and Exante) and there are many exchanges who have submitted their licence application with the Malta Financial Services Authority (MFSA) in recent months following the licensing of several Virtual Financial Assets (VFA) Agents. Furthermore, numerous sole traders have chosen Malta as their due to certain applicable tax and VAT exemptions applicable to traders and their profits.

There are also several local financial institutions which are crypto friendly and provide cryptocurrency exchange and trading solutions both in the B2C and B2B world (such as Finductive and Salamantex). Notably, there is also an increase in the number of retail shops which are accepting crypto payments and also a few Bitcoin ATMs (founded by Ivaja). Admittedly, it is hard to open a bank account with a credit institution especially if you are a crypto start-up company, however, if one is not satisfied with partnering up with a financial institution they can still open an account with a credit institution licensed in another EU jurisdiction (such as Germany).

14. Are there any relevant regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies (e.g. trading of tangible property represented by cryptographic tokens)?

When a token issuer wants to issue a new token on the market from Malta, they must first classify what their token is according to the token categorisation test (called financial instrument test). Only once a token is successfully classified will the issuer know which laws and regulations the token will be subject to. Maltese regulations divide Cryptocurrencies into 4 main categories. These are:

1. Utility Tokens – These are tokens which are not intended to be listed on any exchange and therefore cannot be traded but which were created to offer a specific service/use on a platform. For example, a token which provides specialised access or discounts. These types of tokens are exempt from regulations.

2. Payment Tokens – These are tokens which are backed by Fiat currency (Euro, Dollar, Yen etc.). Just as one would apply for an E-Money licence to issue fiat currency, one would also apply for the same type of financial institution licence if they are planning on issuing fiat backed currency on a token form. It is the method/form which is different. Therefore, the underlying asset/currency is the same.
Examples of these tokens would include Tether and Stasis.

3. Security Tokens – As the name suggests, these are traditional securities as are listed in the ‘financial instruments’ list found in MIFID, such as shares, bonds and commodities. Therefore, the process of issuing and trading security tokens would be subject to the Maltese Investment Services Act and the EU MIFID directive.

Examples of these tokens would be Digix and Bitbond.

4. Virtual Financial Asset (VFA) Token (hybrid) – This last category is one created by Maltese legislators. In a nutshell, if the token has value and can be traded, but is neither a payment token nor a security token, then it is a VFA Token.

Examples of these tokens include: Bitcoin, Ethereum and BNB.

In relation to restrictions, the regulations cap the amount retail investors may invest in when purchasing tokens for reasons of investor protection.

15. Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over tokens and virtual assets?

Yes, there have been cases where violations have occurred due to errors in the code/software (for example as happened in the famous DAO case). Whilst automation is a positive aspect of DLT technology, there is a chance that errors in the code result in wrong behaviour or outcomes. Although this is rare, it is not impossible. Another associated negative effect of this, is that, in these cases it is not clear who will be held accountable. Is it the person writing the code? Maltese regulations have tried to minimise the risk of these potential technological glitches occurring by obliging firms to get their technology arrangements audited by specialised registered Systems Auditors and Certified by the Malta Digital Innovation Authority.

16. How are smart contracts characterised within your legal framework? Are there any enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?

The fact that Malta has a Cryptocurrency and Blockchain framework in place gives legal recognition to smart contracts. Smart contracts would be assessed and treated with the same laws as traditional contract law principles and a court would recognise these codified agreements when settling disputes.
To what extent are smart contracts in use in your jurisdiction? Please mention any key initiatives concerning the use of smart contracts in your jurisdiction.

The most recent Blockchain use case announcement in the public sector in Malta is concerning the adoption of Blockchain for Child Adoption processes, specifically around the process of digitizing the process, which currently depends on a large number of documents being mailed. The government of Malta is now currently in high level discussions about adopting Blockchain technology for an IP register, a digital identity wallet for all Maltese residents and also digitising the Malta Business Registry on Blockchain.

18. Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?

To date there have been no regulatory enforcement actions concerning blockchain in Malta.

19. Has there been any judicial consideration of blockchain concepts or smart contracting in your jurisdiction?

Not yet, however, the author believes that the Maltese Courts would deem information recorded on the Blockchain / DLT as admissible in court and also treat smart contracts as having legal contractual force given that such concepts are well described in local regulations.

20. Are there any other generally-applicable laws or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?

Data Protection

In their current state, most smart contracts are not entirely confidential. Some of the biggest advantages of Blockchain, may also be some of its biggest drawbacks: such as when it comes to data protection legislation. There is uncertainty as to whether Blockchain technology violates the EU General Data Protection Regulation (GDPR). Since Blockchain is an immutable ledger it is incompatible with the concept of the right to be forgotten. Furthermore, the development of blockchain projects do not always carefully assess what sort of data is being stored and whether such data could be personal data. For example, public keys would be considered as personal data, thereby attracting the full range of GDPR compliance obligations.

A common way to work around these potential issues for GDPR compliance is to store certain sensitive data outside of the main public blockchain (on a sidechain) and use the main public blockchain for verification, time-stamping and storing of non-sensitive data. In this regard it is also worth mentioning that ‘zero-knowledge proofs’ can be used to ensure that only non-personal data can be derived from an entry on a blockchain.
Jurisdiction

Another potential legal headache when it comes to Blockchain technology is Jurisdiction. Parties to contracts may be in different jurisdictions, so unless a jurisdiction clause is specifically mentioned in the smart contract, determining jurisdiction could be a complicated battle.

Intellectual Property (IP)

One of blockchain’s core value is the fact that code is open source in nature, so persons may freely copy it and improve on it for the benefit of all. This decision is in stark contrast to the beliefs that surround Intellectual Property laws where owners want to be in control of their work.

On the topic of IP, it is worth mentioning that Blockchain has many advantages to offer in this context since its ledgers create time-stamped records which may not be altered retrospectively. If one would like to protect one’s source code there is, however, a concept called ‘proof of authorship’ protocol which can provide authors of digital data, evidence proving their ownership. The Maltese government is currently exploring the creation of a DLT-based proof of authorship IP register.

Privacy

One main challenge or issue when Blockchain technology started to emerge and become more widely adopted was the fact that some blockchain platforms and token characteristics allow for anonymity (such as Monero or Zcash) or pseudonymity (bitcoin). To discourage anonymization techniques, most governments, including Malta, impose AML rules on service providers and issuers. This is especially important for exchanges since they are the gateway between the worlds of fiat and crypto.

21. Are there any other key issues concerning blockchain technology in your jurisdiction that legal practitioners should be aware of?

Liability

Whilst automation is a positive aspect of DLT technology there is a chance of code error resulting in wrong behaviour or outcome. In such cases, who would be liable? The software developers? For this reason prior to any licence approval of DLT based Service Providers, the Malta Digital Innovation Authority will need to certify that a registered Systems Auditor has audited the technological arrangements (such as smart contracts, wallets, blockchain) and also see that a Technical Administrator is appointed, in order to ensure that the necessary tests have been done and that a high level of security is guaranteed. The MFSA also requests
service providers to have a cyber security framework in place.

Identification of the Parties

Off-chain enforcement may be required in the event of certain smart contract breaches. This may cause problems where anonymity or pseudonymity is coupled with an international aspect. Therefore, the identification of the parties that consent to jurisdictional clauses in smart contracts is imperative. If the parties wish to remain private, smart contracts cannot rectify or resolve breaches, and disputes may arise.

Cyber-security

More often than not, a consistent challenge that key players using DLT technology encounter is the cybersecurity challenge. Some specific cyber-security challenges include:

- Privacy – in permissionless ledgers, all counter parties can download the ledger which means that they can see a person’s transaction history. One potential solution is using hyperledger technology, which can allow for certain customised security protections.
- Cryptography – Most blockchains rely on cryptography to generate public and private keys to function. Some of these programs have been identified as weak.
- Key Management – Private keys are a means of authorisation to access a wallet/account. There have been countless notorious cases of persons losing their private keys. One potential option to keep one’s keys safe in case of loss is entrusting a licensed custodian to do it for you!