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## **CYSEC’S NEW POLICY STATEMENT ON THE REGISTRATION AND OPERATIONS OF CRYPTO-ASSET SERVICES PROVIDERS**

### **INTROCUITION**

On the 13<sup>th</sup> of September 2021, the Cyprus Securities and Exchange Commission (“**CySEC**”) published a policy statement with respect to the Registration and Operations of Crypto Asset Services Providers (“**CASP**”) *to outline the approach of the obliged entities, on the principles contained in the AML/CFT Law in relation to the **CASP** activities.*<sup>1</sup>

At EU level the provision of services in relation to crypto assets is envisioned to be regulated under the EC’s proposed Regulation on *Markets in Crypto Assets* (“**MiCA**”), which also assimilates certain crypto assets to e-money tokens, whereas for the purposes of preventing Money Laundering and Terrorist Financing crypto-assets’ activities are already covered under the 5<sup>th</sup> AML Directive at EU level (“**AMLD5**”).

Therefore, where crypto-assets do not qualify as financial instruments, MiCA establishes a harmonized framework for issuers seeking to offer crypto-assets in the EU and for “**crypto-asset service providers**” wishing to apply for an authorization to provide related services.<sup>2</sup>

### **WHAT IS DISTRIBUTED LEDGER TECHNOLOGY (“DLT”)**

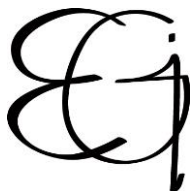
**CRYPTO-ASSETS** are a type of private asset that depends primarily on cryptography and Distributed Ledger Technology.

**DLT** particularly Blockchain is currently known as the underlying technology of crypto assets is a technology that allows for the decentralised validation and keeps the transaction records, data, and other information. It allows for the e decentralised validation and distribution of

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<sup>1</sup> <https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=38342fb3-b85f-483a-830b-736fd4b76bce>

<sup>2</sup> [https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_gl/topics/banking-and-capital-markets/ey-crypto-assets-the-global-regulatory-perspective.pdf?download](https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/banking-and-capital-markets/ey-crypto-assets-the-global-regulatory-perspective.pdf?download)



records of information, either privately or publicly, creating a repeated digital copy of data available at multiple locations, known as nodes.

**DLT** is a means of saving information through a distributed ledger, i.e., a repeated digital copy of data available at multiple locations. It is built upon public-key cryptography, a cryptographic system that uses pairs of keys: public keys, which are publicly known and essential for identification, and private keys, which are kept secret and are used for authentication and encryption.

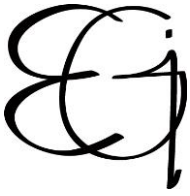
**EVEN THOUGH** the deployment of DLT may provide several potential benefits when used in the securities markets such as:

- i. More efficient post-trade processes;
- ii. Enhanced reporting and supervisory functions;
- iii. Greater security and availability;
- iv. Reduced counterparty risk and enhanced collateral management;
- v. Cost reduction in transactions, through the removal of intermediaries; and
- vi. Creation of tamper-proof and immutable records,

It also raises specific risks and challenges.

**DEPENDING ON THEIR STRUCTURE**, crypto assets may, inter alia:

- i. Qualify as financial instruments under the Investment Services and Activities and Regulated Markets Law, transposing MiFID II5 (the “Investment Services Law”);  
Qualify as Electronic Money under the Electronic Money Law, transposing EMD27 (the “**E-Money Law**”).
- ii. Be a digital representation of value that is neither issued nor guaranteed by a central bank or a public authority, it is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred,



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stored, and traded electronically, and it does not qualify neither as fiat currency, nor as any of the instruments referred to in points (i) and (ii) above.

- iii. The term “**Crypto-assets**” will hereinafter be used to describe the products referred to in point iii of the previous paragraph, whereas the products of points of (i) and (ii) of the previous paragraphs, will be referred to as (“**Financial Instrument Tokens**” or “**FIT**”) and (“**E-Money Tokens**” or “**EMT**”), respectively.

**THE CRYPTO-ASSETS** may qualify as financial instruments under the Investment Services and Activities and Regulated Markets Law. Additionally, while cryptocurrencies cannot be regarded as legal tender, they may qualify as “**electronic money**” or “**e-money**” in the sense of the Electronic-Money Directive. The new policy also introduces a definition for crypto assets that slightly extends beyond its traditional legal status.<sup>3</sup>

## **REGISTRATION**

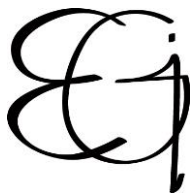
**Cyprus CASPs** must be registered with CySEC, to be able to provide services and execute activities with respect to crypto- assets. CASPs are regulated under the **CUMULATIVE CASP RULES**.

**CASPs** established in another EU member state, or a third country (operation through Cyprus) will be subject to registration and supervision under the **CUMULATIVE CASP RULES**.

**THE CUMULATIVE CASP RULES** shall mean: *The Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 (the “**AML/CFT Law**”), the CySEC Directive for the prevention and suppression of money laundering and terrorist financing - Register of Crypto Asset Services Providers (the “**CASP Registration Directive**”) and the CySEC Directive for the Prevention and Suppression of Money Laundering and Terrorist Financing (collectively hereinafter the “**Cumulative CASP Rules**”),*

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<sup>3</sup> <https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=13075523-a19e-43d9-8cce-e2c0e0f5bca9>



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**INFORMATION** to be provided for the registration of a CASP is the name, trade name, legal form, and the legal entity identifier, the physical address, the services provided and the website.

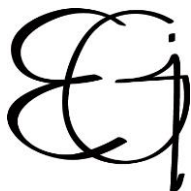
**NEW BUSINESSES** must register with CySEC before commencing their operations in or from Cyprus.

**EXISTING** businesses that demonstrate a material existing crypto-asset activity will need to apply before the end of October 2021 and be fully compliant with the AML/CFT Law and the Directives issued pursuant to the AML/CFT Law.

**AT THE APPLICATION STAGE**, the applicants should provide an organogram, along with a visual representation of the reporting lines, a detailed elaboration to be included in the IOM in relation to the governance arrangements, the responsibilities of the Board, the responsibilities of the persons holding a management position, as also a detailed elaboration on the reporting lines at the level of the entity and at a level of each department. Explanations as to how the governance arrangements and reporting lines are in line with the obligations under the AML/CFT Law and the CASP Registration Directive, ensuring the good operation of the CASP.

**IN THE IOM**, a business continuity and recovery plan, elaborating the policies and procedures, as well as on the practical implementation thereof must be included, to ensure compliance with the responsibilities, and should include a comprehensive risk assessment to identify the risks, threat and vulnerabilities of the applicants, a detailed description as to how risk is mitigated by each policy and procedure included in the business continuity and recovery plan.

**THE RISK ASSESSMENT** must also address the case where despite the mitigation of all other risks the operations were to be disrupted and this risk must be addressed by formulating policies on business recovery. An explanation as to how the business recovery policies are adequate to ensure the timely resumption of activities must also be provided.



## **OBLIGATIONS**

**CASPs** must abide to the following rules:

- The fitness and probity of the CASP Beneficiaries and persons holding a management position;
- the conditions in relation to CASPs registration;
- the organisational and operational requirements;
- performing Know Your Client and other client due diligence measures;
- drawing the economic profile of the their clients;
- identifying the source of funds of their clients;
- monitoring the clients' transactions;
- identifying and reporting suspicious transactions;
- undertaking a comprehensive risk assessment in relation to their clients and activities and take proportionate measures per client, activity and crypto-asset in question

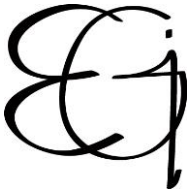
**CASPs** shall formulate and submit to CySEC by the end of 2021 an action plan for phasing out their crypto-assets' activities, up until the end of 2022.

## **OUTSOURCING**

**WHEN OUTSOURCING** the performance of critical functions to third parties, reasonable steps must be taken to avoid any undue additional operational risk and, in any case, it must be ensured that the quality of the internal controls or CySEC's ability to supervise, are not materially impaired.

**WHEN OUTSOURCING**, all third parties that will perform certain functions, operations, or activities need to be specified in the Business Plan, together with the remuneration per third party. A risk assessment must be undertaken to identify any potential risks, thread and vulnerabilities that may arise from such outsourcing. The mitigation strategy per risks identified and the respective policies and procedures must be reflected in the IOM, including the policies and procedures in relation to the seamless termination of the outsourcing when necessary.

**WHEN OUTSOURCING**, the IOM must include a detailed description on how such functions will be monitored by the CASP in question, specifying the physical persons within the CASP



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who are responsible for the oversight of the functions to be outsourced. The IOM must also include a detailed description on the policies and procedures that ensure a seamless access to facilities and relevant data and records of such third party by the CASP and by CySEC where so requires.<sup>4</sup>

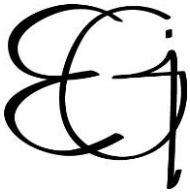
### **CYSEC REVIEWS**

**CySEC** will begin to assess applications from existing or potential CASPs.

If you are an existing CASP or not registered yet, make sure you comply with CySEC's new policy to regulate the registration of Crypto-Asset Providers.

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<sup>4</sup> <https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=13075523-a19e-43d9-8cce-e2c0e0f5bca9>



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