

Registration of Crypto Asset Service Providers with CySEC: Regulatory framework, Conditions and Legal challenges



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1. Current legislative framework for crypto asset services providers in Cyprus

Current legislative framework for crypto asset services providers in Cyprus

- The Prevention and Suppression of Money Laundering and Terrorist Financing Law;
- The Cyprus Securities and Exchange Commission (CySEC) issued the **Directive for the prevention and suppression of money laundering and terrorist financing (Register of crypto asset services providers) of 2021**;
- On September 2021, CySEC issued Policy Statement no. PS-01-2021 on the **Registration and Operations of Crypto-Asset Services Providers**;
- FATF Recommendations no. 15 and 16 on International Standards on combatting money laundering

Basic terms: What is a crypto-asset?

“Crypto-asset” means 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 it is accepted by natural or legal persons as a means of exchange and which can be transferred, stored, and traded electronically, and it is not:

- a) fiat currency, or
- b) electronic money, or
- c) financial instruments, as these are specified in Part III of the First Appendix to the Investment Services and Activities and Regulated Markets Law.

Basic Terms: Who is a Crypto Asset Services Provider (CASP)?

“Crypto Asset Services Provider” or “CASP” means a person who provides or exercises one or more of the following services or activities to another person or on behalf of another person, which do not fall under the services or activities of the obliged entities mentioned in paragraphs (a) to (h) of article 2A of the AML Law:

- a) Exchange between crypto-assets and fiat currencies;
- b) Exchange between crypto-assets;
- c) Management, transfer, holding and/or safekeeping, including custody, of crypto-assets or cryptographic keys or means which allow the exercise of control over crypto-assets;
- d) Offering and/or sale of crypto-assets, including the initial offering; and
- e) Participation and/or provision of financial services regarding the distribution, offer and/or sale of crypto-assets, including the initial offering.

Basic Terms: Financial Services Relating to Distribution, Offering and Sale of Crypto- Assets

“Financial Services Relating to the Distribution, Offering and/or Sale of Crypto-Assets” means the following services and activities relating to crypto-assets:

- a) Reception and transmission of orders;
- b) Execution of orders on behalf of clients;
- c) Dealing on own account;
- d) Portfolio management;
- e) Provision of investment advice;
- f) Underwriting and/or placing of crypto assets with a firm commitment;
- g) Placing of crypto-assets without a firm commitment;
- h) Operation of a multilateral system, which brings together multiple third-party buying and selling interests in crypto assets in a way that results in a transaction.

Basic Terms: Travel Rule

Obligated entities sending or receiving a material crypto-asset transfer to or from a CASP should obtain accurate originator and beneficiary information.

Material crypto-asset transfer means any transaction exceeding Euro 1.000 on behalf of a payer with a view to making the crypto asset available to a payee.

The Prevention
and
Suppression of
Money
Laundering and
Terrorist
Financing Law:
Main CASP-
related points


- CASPs are obliged entities and are therefore subject to all AML obligations.
- CASPs should be registered with the Cyprus Securities and Exchange Commission established (Section 61E);
- Conditions and organizational and operational requirements for CySEC registration;
- Legal basis for the issue of a CySEC Directive regulating the CAPS' Register.

CySEC
Directive for
the Register
of crypto asset
services
providers of
2021

- Information provided in the CASP Register and the registration application;
- Conditions for the registration in the CASP Register (Paragraph 6);
- Deregistration and suspension procedures;
- Organizational and operational requirements (Part V).

CySEC Policy Statement no. PS-01-2021 on the Registration and Operations of Crypto-Asset Services Providers.

- **Risks of Crypto Assets identified by CySEC;**
- Territorial Scope;
- **CySEC's expectations regarding compliance with CASP's registration requirements;**
- Guidance on Travel Rule;
- Investment firms previously permitted by CySEC to provide crypto asset activities should have submitted by the end of 2021 an application to register in the CASP Register and provide services until the end of 2022. As from 2023, they should provide crypto asset services under a new entity.



2. Conditions for registration in the CASP Register of CySEC

Territorial Scope: Which CASP is obliged to Register in CySEC?

CySEC CASP Register	CySEC European Economic Area CASP Register
CASPs incorporated in Cyprus and operating from Cyprus	CASPs incorporated in the EEA and registered in another EEA NCA Register
CASPs not incorporated in Cyprus and operating from Cyprus	
CASPs incorporated in a non-EEA country and operating from Cyprus	

Submission of application for registration in the CASP Register

The prospective CASPs must submit the relevant application form issued by CySEC for the registration in the CySEC CASP Register, duly completed, which must inter alia include information in relation to:

- i. the name, trade name, legal form and legal entity identifier of the CASP;
- ii. the physical address of the CASP;
- iii. the services provided and/or the activities that the CASP may carry out as defined in subparagraphs (a) to (e), in the definition of "Crypto Asset Services Provider" in paragraph (1) of section 2 of the Law;
- iv. the website of the CASP;
- v. all public addresses of crypto-assets and/or of public keys/digital wallets controlled by the CASP that are used or can be used in the operation of the CASP in relation to each crypto-asset;
- vi. The crypto-assets in relation to which they engage in any activity;

Submission of application for registration in the CASP Register (2)

- vii. Whether the CASP accepts other CASPs as customers or not;
- viii. Whether or not the CASP offers business payment services in crypto assets to vendors;
- ix. Whether the CASP operates Crypto-Assets-ATMs, the number and the geographical location thereof;
- x. Whether the CASP is registered or supervised in any other jurisdiction;
- xi. All documents and/or additional information specified in the CASP Application Form.

Key Obligations for CASP registration and CySEC approach



Persons holding a management position in the CASP must be honest and competent. The Board of Directors shall be comprised of at least four (4) members, two (2) of which must direct the business activities of the CASP and two (2) must be independent members.

CySEC: The 2 executive members and certain heads of major departments should be located in Cyprus

Good reputation, knowledge skills and experience of management should be proven by the applicant and shall be scrutinized in detail by CySEC

Multiple administrative and executory positions of Board members shall raise questions.

Independent Board members should not hold material shareholding.

QUALIFIED MANAGERS SHOULD BE WORKING IN CYPRUS!!

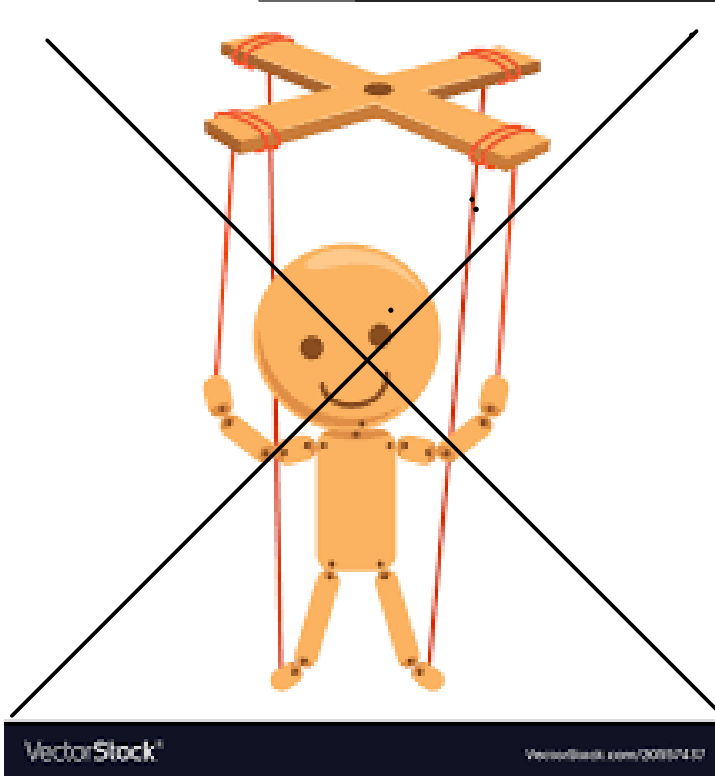
Key Obligations for CASP registration and CySEC approach

CASP beneficiaries are honest and competent and they have the ability to maintain the strong financial capacity of the CASP.

CySEC: Reputation of the beneficiaries shall be heavily scrutinized.

The source of wealth and net financial position of the beneficiaries is reviewed to safeguard the financial capacity.

NO ROOM FOR PUPPETS!



Key Obligations for CASP registration and CySEC approach



Proper operational structure and appropriate AML policies and procedures

CySEC: Adequate number of personnel and quality

Detailed review of AML and conflict of interest procedures

Key Obligations for CASP registration and CySEC approach

Proper business model of the Applicant

CySEC: Adequate own funds (Euro 150.000 or less depending on the type of crypto asset activity) should be deposited in a separate account

Composition of the clientele of the applicant (private or professional clients)

Whether the clients will hold crypto asset private keys/private wallets or the CASP will hold the wallet/ownership/custody

The applicant has agreements with crypto exchanges located in jurisdictions applying EU or EU-equivalent AML rules

Key
Obligations
for CASP
registration
and CySEC
approach

List of crypto assets/cryptocurrencies for which the CASP shall render services to clients

CySEC: Chain analytics shall be implemented to the declared public wallet addresses, in order to establish whether there are any negative findings

Initial Capital of CASPs

CASP	Type of crypto-asset activity	Initial Capital
Class 1	CASPs that provide investment advice	€50.000
Class 2	CASPs providing the service referred to in Class 1 and/or any of the following services: <ul style="list-style-type: none">-reception and transmission of client orders-execution of orders on behalf of clients- exchange between crypto-assets and fiat currency-exchange between crypto-assets-participation and/or provision of financial services related to the distribution, offering and/or sale of crypto-assets, including the initial offering-placement of crypto-assets without firm commitment-portfolio management.	€125.000
Class 3	CASPs that provide any of the services referred to in Class 1 or 2 and/or: <ul style="list-style-type: none">-administration, transfer of ownership, transfer of site, holding, and/or safekeeping, including custody, of crypto-assets or cryptographic keys or means enabling control over crypto-assets-underwriting and/or placement of crypto-assets with firm commitment-operation of a multilateral system, which brings together multiple third-party buying and selling interests in crypto-assets in a way that results in a transaction.	€150.000

Registration charges

CySEC registration charges are as follows:

€10.000 for the examination of an application. Successful applicants will not be required to pay an additional fee for the first year of their registration.

€5.000 for the purposes of renewal of registration per year.

Current status of
the CASP
Registers in
CySEC

CASP Register	European Economic Area CASP Register
Just2Trade Online Ltd Cyprus Investment Firm registered on 08.03.2022 to provide crypto asset services until the end of 2022	BTCBIT OÜ - Estonia Dream Finance OU - Estonia Teroxx Worldwide OU - Estonia
RT Digital Securities Cyprus Ltd Registered on 09.08.2022 to provide crypto asset services	BTCBIT sp. z o.o. - Poland Foris Dax MT Limited – Malta

Profile of RT Digital Securities Cyprus Ltd

Incorporated in January 2022

Board of Directors:

DARREN ELLIS

SAMEER GOVILA

DMYTRO STRELCHUK – Operations Manager of Revolut UK

IVAN CHALOV – General Manager of Revolut UK

Registered Shareholder:

Revolut Ltd (UK)

Beneficial owners declared in the Beneficial Owner Register:

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It is important for Cyprus that Revolut selected to be regulated by CySEC for its crypto asset services

3. Legal Challenges

Pre- and
post-approval
requirements
for the
registration in
the CAPS
Register of
CYSEC

**Post-approval, CySEC expects
CASPs to adopt ongoing and even
drastic measures for their
continuous compliance.**

**Example: reference to dismissal
of managers, when necessary**

**Continuous risk assessment,
reporting and compliance and
updating of the AML Manual**

Minimise the risk of theft or loss of the crypto assets of CAPSs' clients

Non exhaustive list of best practices suggested by CySEC:

- Restrict the amount of crypto assets held in hot wallets
- Different layers of approval for a transaction
- Chinese walls separation of persons initiating and approving a transaction
- Due diligence of thrips party hot wallets
- Due diligence of off-chain cold wallets

MiCA is
coming

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-assets, and amending Directive (EU) 2019/1937-(MiCA)

Out of scope: crypto assets that qualify as financial instruments, electronic money and deposits.

Provisional agreement was reached between the EU co-legislators on 30.06.2022

MiCA is coming (2)

Crypto-asset service providers (CASPs) will need an authorisation in order to operate within the EU. National authorities will be required to issue authorisations within a timeframe of three months. Regarding the largest CASPs, national authorities will transmit relevant information regularly to the European Securities and Markets Authority (ESMA).

Non-fungible tokens (NFTs), i. e. digital assets representing real objects like art, music and videos, will be excluded from the scope except if they fall under existing crypto-asset categories. All issuers (except those making small offerings) and service providers would be subject to EU law and would benefit from an EU passport. The national bespoke regimes on crypto-assets would no longer be applicable.

MiCA is coming (3)

MiCA will protect consumers by requesting stablecoins issuers to build up a sufficiently liquid reserve, with a 1/1 ratio and partly in the form of deposits. Every so-called “stablecoin” holder will be offered a claim at any time and free of charge by the issuer, and the rules governing the operation of the reserve will also provide for an adequate minimum liquidity. Furthermore, all so-called “stablecoins” will be supervised by the European Banking Authority (EBA), with a presence of the issuer in the EU being a precondition for any issuance.

The development of asset-referenced tokens (ARTs) based on a non-European currency, as a widely used means of payment, will be constrained to preserve monetary sovereignty. Issuers of ARTs will need to have a registered office in the EU to ensure the proper supervision and monitoring of offers to the public of asset-referenced tokens.

More Anti-
money
laundering
rules are
coming:
transparency
of crypto
asset
transfers

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on information accompanying transfers of funds and certain crypto-assets

Provisional agreement was reached between the EU co-legislators on 29.06.2022

Travel Rule enhanced: **the full set of originator information travel with the crypto-asset transfer, regardless of the amount of crypto assets being transacted.** There will be specific requirements for crypto-asset transfers between crypto-asset service providers and un-hosted wallets.

Crypto-asset service providers will have to implement appropriate internal policies, procedures and controls to mitigate the risks of evasion of national and Union restrictive measures.

Ierotheou, Kamperis & Co. LLC

Advocates – Legal Consultants

We are practicing law ever since 1997. The firm is a member of the Cyprus Bar Association.

One of our name partners is a member of the Board of CySEC.

We provide the following services to clients:

Legal,

Digital, 5G and blockchain

Funds and CASPs set up and administration

Tax Planning,

Incorporation and Management of Cyprus and foreign companies and Funds,

Creation of Cyprus International Trusts and Foundations combined with trustee services,

Fully fledged offices and accounting through our affiliated companies.