

VIRTUAL FINANCIAL ASSETS FRAMEWORK
FREQUENTLY ASKED QUESTIONS

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

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Section 1 The VFA Framework

FAQ-1.1 Can you provide an overview of the framework for Virtual Financial Assets in Malta?

On the 30 November 2017, the MFSA published a *Discussion Paper on Initial Coin Offerings, Virtual Currencies and related Service Providers* ('the Discussion Paper') ([link](#)). This followed the general principles set out in a statement issued by ESMA on 13 November 2017 (ESMA50-157-828) ([link](#)). As explained in the Discussion Paper, whilst certain Initial Coin Offerings ('ICOs'), DLT assets (previously referred to as Virtual Currencies ('VCs')) and related activities could fall within the scope of existing financial services legislation, others are likely to fall outside scope and would hence be unregulated. The Discussion Paper presented stakeholders with a proposed policy to be adopted by the MFSA for the creation of a high-level principle based regulation, in line with the high level objectives set out by international standard setters, relating to ICOs and the provision of certain services (namely intermediaries that act as brokers, exchanges, investment advisors and market makers) in relation to DLT assets that currently fall outside the scope of existing financial services regulation.

The MFSA received ample positive feedback with respect to the proposed introduction of a new legislative framework regulating ICOs and the provision of certain services in relation to virtual currencies. The MFSA proceeded to draft the Virtual Financial Assets Act (previously referred to as the Virtual Currencies Act and hereinafter referred to as the 'Act') and submitted the Bill to the Government for the initiation of the necessary parliamentary procedures in line with the legislative process. The Act was approved by parliament and was subsequently published on the 20 July 2018 ([link](#)). Notwithstanding its publication, the Act will only come into effect on such date as the Minister for Digital Economy may establish by notice in the Gazette.

On 4 July 2018, the MFSA published a Consultation Paper on the Virtual Financial Assets Regulations to be issued under the Act ([link](#)) which presents a draft Legal Notice setting out regulations on: (i) exemptions; (ii) fees; (iii) control of assets; and (iv) administrative penalties and appeals ('the VFA Regulations'). This consultation closed on 20 July 2018.

The Authority is preparing the rules underlying and complementing the Act and the VFA Regulations. The rules will provide further detailed regulation applicable to operators in this field of financial services. The MFSA is proposing the introduction of a rulebook, titled the 'Virtual Financial Assets Rulebook' (the 'VFA Rulebook'), which will be subdivided into three chapters as follows:

(i) Chapter 1 - Virtual Financial Assets Rules for VFA Agents; (ii) Chapter 2 - Virtual Financial Assets Rules for Issuers of Virtual Financial Assets; and (iii) Chapter 3 - Virtual Financial Assets Rules for VFA Service Providers.

Chapter 1 ([link](#)), Chapter 2 ([link](#)) and Chapter 3 ([link](#)) were issued for consultation on 12 July 2018, 30 July 2018 and 14 September 2018, respectively. The consultation periods for the VFA Rulebook has now closed.

Furthermore, on the 21 August 2018 the MFSA issued a *Consultation Paper on achieving a Higher Degree of Investor Protection under the Virtual Financial Assets Act* ([link](#)). On the 4 September 2018 issued a *Consultation Paper on raising the bar for VFA Agents* ([link](#)). The consultation periods for these papers have also closed.

One of the central points for discussion outlined in the Discussion Paper, proposed the introduction of a 'Financial Instrument Test' ('the Test'). The objective of the Test is to determine whether a DLT asset, based on its specific features, is encompassed under (i) the existing EU legislation and the corresponding national legislation, (ii) the Act or (iii) is otherwise exempt. The Test will be applicable both within the context of an ICO as well as during the intermediation of DLT assets by persons undertaking certain activities in relation to such assets in or from within Malta. The Authority issued a *Consultation Paper on the Financial Instrument Test* on 13 April 2018 ([link](#)). Having reviewed the feedback received, the MFSA issued the Test for beta testing, together with Guidance Notes thereto on the 24 July 2018 ([link](#)).

FAQ-1.2 How can I remain abreast with developments on the VFA Framework?

The Authority has set up a specific section on its website where all publications/developments in this sphere shall be uploaded ([link](#)).

FAQ-1.3 When will the Act come into force?

The Act will come into force on 1 November 2018.

FAQ-1.4 When can I apply for authorisation under the Act?

The MFSA will be in a position to consider applications, authorisations and approvals under the Act, on 1 November 2018.

FAQ-1.5 Which activity will fall under the Act?

The following activities are regulated by the Act when conducted in or from within Malta:

- i. The offering of a Virtual Financial Asset ('VFA') to the public by an Issuer;
- ii. The application, by an Issuer, for a VFA's admission to trading on a DLT Exchange;
- iii. The activity of a VFA Agent; and
- iv. The provision of VFA services.

FAQ-1.6 Do Collective Investment Schemes wishing to invest in VFAs fall within the scope of the VFA framework?

No, Collective Investment Schemes ('CISs') are regulated under the traditional financial services framework.

In this respect, on the 23 October 2017, the MFSA issued a consultation document on the Proposed Regulatory Framework for Collective Investment Schemes investing in VCs. This consultation was concluded and the MFSA proceeded with the issue of a Feedback Statement on 22 January 2018 summarising the response received from stakeholders and setting out the MFSA's position thereto ([link](#)). The MFSA published the supplementary conditions applicable to Professional Investor Funds investing in VCs on 29 January 2018 ([link](#)). These rules aim at providing a robust regulatory framework that seeks to ensure investor protection, market integrity and financial soundness with regard to CISs that invest in DLT assets. In order to achieve these objectives, the supplementary conditions introduce specific requirements both during authorisation stage as well as on an ongoing basis thereafter *inter alia* relating to: competence, risk warnings, quality assessment, risk management and valuation.

In the *Circular to the Industry on the Supplementary Conditions applicable to Collective Investment Schemes Investing in Virtual Currencies* issued by the MFSA on 29 January 2018 ([link](#)) one may find rules applicable to Professional Investor Funds ('PIFs') (either self-managed or third-party managed) that having an investment objective of investing in VCs. The supplementary conditions applicable to PIFs investing in DLT assets can be found under Part A

of the Investment Services Rules for Professional Investor Funds ('the Rules') ([link](#)) and under Section 9 of Appendix I to Part B of the Rules ([link](#)). The *Feedback Statement issued further to industry responses to the MFSA Consultation on the proposed regulation of Collective Investment Schemes investing in Virtual Currencies* ([link](#)) also refers.

Kindly refer to Part A of the Investment Services Rules for Qualifying Professional Investor Funds ([link](#)) and Appendix 1 to Part B of the Rules ([link](#)) for the relevant supplementary conditions.

FAQ-1.7

Can a CIS, other than a PIF, invest in VFAs?

No. However the Authority is currently considering whether the published supplementary conditions for PIFs should also be implemented within the context of regulated alternative investment funds and notified alternative investment funds. Any developments in this regard will be made available on the MFSA website.

Section 2 Classification of DLT Assets

FAQ-2.1 What is DLT?

Article 2 of the Act states that *“Distributed Ledger Technology” or “DLT” means a database system in which information is recorded, consensually shared, and synchronised across a network of multiple nodes as further described in the First Schedule of the Innovative Technology Arrangements and Services Act, 2018, whether the same is certified under that Act or otherwise”.*

FAQ-2.2 What is a DLT Asset?

Article 2 of the Act states that the term *“DLT asset” means –*

- (a) a virtual token;*
- (b) a virtual financial asset;*
- (c) electronic money; or*
- (d) a financial instrument,*

that is intrinsically dependent on, or utilises, Distributed Ledger Technology”.

FAQ-2.3 What is a Virtual Token (‘VT’)?

Article 2 of the Act defines a VT as a form of digital medium recordation whose utility, value or application is restricted solely to the acquisition of goods or services, either solely within the DLT platform in relation to which it was issued or within a limited network of DLT platforms.

The definition also provides two provisos as follows: (i) for purposes of the definition the term “DLT platform” as referred to therein shall exclude DLT exchanges; and (ii) that a virtual token which is or may be converted into another DLT asset type shall be treated as the DLT asset type into which it is or may be converted.

FAQ-2.4 What is a VFA?

Article 2 of the Act states that a *“virtual financial asset” or “VFA” means any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not -*

- (a) electronic money;*
- (b) a financial instrument; or*
- (c) a virtual token”.*

FAQ-2.5 What is electronic money?

Article 2 of the Act states that the term *“electronic money” shall have the same meaning assigned to it under the Third Schedule to the Financial Institutions Act”.*

FAQ-2.6 What is a financial instrument?

Article 2 of the Act states that the term *“financial instrument” shall have the same meaning assigned to it under the Second Schedule to the Investment Services Act, whether or not issued in Malta”.*

FAQ-2.7 How can I determine whether a DLT Asset is a VT, a VFA, electronic money, or a financial instrument?

The MFSA has issued the Test, the purpose of which is determining whether a DLT asset qualifies as (i) electronic money; (ii) a financial instrument; (iii) a VFA; or (iv) a VT.

Following a public consultation, a beta version of the Test, together with complementing Guidelines to the Financial Instrument Test (‘the Guidelines’), was issued on the 24 July 2018 ([link](#)).

FAQ-2.8 Who should perform the Test?

The Test is applicable to (i) issuers offering DLT assets to the public or wishing to admit such DLT assets on a DLT exchange in or from within Malta; and (ii) persons providing any service and/or performing any activity, within the

context of either the VFA Act or traditional financial services legislation, in relation to DLT assets whose classification has not been determined for any reason whatsoever, including *inter alia* because the offering of the said DLT asset was conducted abroad.

The Test shall also be signed by one of the following persons, as applicable, wherein he or she declares their agreement with the determination:

- i. the VFA Agent in case of Issuers of initial VFAs offerings;
- ii. the compliance officer in case of licence holders under either the VFA Act or traditional financial services legislation; or
- iii. the VFA Agent or legal advisor, as applicable, in case of unlicensed persons.

FAQ-2.9 What happens if the DLT asset is determined to be a VT?

Should a DLT asset be determined by the Test to be a VT, any activity performed in relation thereto would remain unregulated.

FAQ-2.10 What if a VT can be converted into another DLT asset type? Would it still be considered as a VT?

The second proviso to the definition of a VT states that *“a VT which is or may be converted into another DLT asset type shall be treated as the DLT asset type into which it is or may be converted”*.

On the basis of the above, it should be understood that in order for a DLT asset to qualify as a VT, its underlying token standard should not allow for either (i) trading outside the DLT platform on or in relation to which it was issued or within a limited network of DLT platforms (which term shall exclude DLT exchanges); or (ii) technical conversion into another DLT asset type. Should any of the above requirements not be satisfied, then such DLT asset would not qualify as a VT.

FAQ-2.11 **Why does the Test make reference to whether the token standard allows for the DLT asset's conversion, rather than to whether the DLT asset may be converted?**

The Authority considers that the standard availed of will in itself demonstrate whether the token may be converted. It is therefore necessary for users of the Test to make reference to the token standard being used; and the proviso to the definition of a VT should not be interpreted narrowly.

FAQ-2.12 **What happens if the DLT asset is determined to be a financial instrument or electronic money?**

Should a DLT asset be determined by the Test to be a financial instrument or electronic money, the respective framework would apply. For example, DLT assets which qualify as financial instruments can only be traded on trading venues falling within scope of MiFID.

FAQ-2.13 **Are stable coins considered to be electronic money?**

A DLT asset would need to meet all of the requirements of electronic money in order to qualify as electronic money under the Financial Institutions Act. Whereas stable coins may exhibit certain similarities to electronic money, it should not be construed that they automatically qualify as such.

FAQ-2.14 **What happens if the DLT asset is determined to be a VFA?**

Should a DLT asset **not** be determined by the Test as (i) a VT, (ii) a financial instrument or (iii) electronic money, such DLT asset would qualify as a VFA. The Act and the VFA Framework would therefore apply.

FAQ-2.15 **Will the MFSA be reviewing determinations conducted in terms of the Test?**

The MFSA may review the submitted determinations on an *ad hoc* basis. The MFSA may also, by notice in writing to any person, determine that a DLT asset qualifies as a VFA, a VT, electronic money or a financial instrument, and whether or not issued in Malta.

Notwithstanding the above, it should be noted that the onus of assessments with respect to the classification of a DLT asset rests with the person

conducting the Test and the respective person endorsing the Test in accordance with the Guidelines.

FAQ-2.16

Will the MFSA be establishing a public register for determinations conducted in terms of the Test?

Yes, the MFSA intends to hold a public register of DLT assets for which a determination has been made, including the classification thereof. Whereas the MFSA will not be taking a position or reviewing such determinations, persons will be allowed to rely on determinations made by others. This notwithstanding, it is noted that persons opting to place reliance on others' determinations still remain responsible.

Section 3 VFA Agents

FAQ-3.1 What is a VFA Agent?

Article 2 of the Act states that the term “VFA Agent” means a person registered with the competent authority under this Act and authorised to carry on the profession of:

- (a) advocate, accountant or auditor; or
- (b) a firm of advocates, accountants or auditors, or corporate services providers; or
- (c) a legal organisation which is wholly owned and controlled by persons referred to in paragraphs (a) or (b),

whether in Malta or in another recognised jurisdiction, or any other class of persons holding authorisations, qualifications and, or experience deemed by the competent authority as possessing suitable expertise to exercise the functions listed under Articles 7 and, or 14” of the Act.

FAQ-3.2 **Is it only advocates, accountants, auditors, firms of advocates, accountants or auditors, or corporate services providers; or a legal organisations wholly owned and controlled by such persons who may perform the role of a VFA Agent?**

No, Article 2 of the Act also makes explicit reference to any other class of persons holding authorisations, qualifications and, or experience deemed by the competent authority as possessing suitable expertise to exercise the functions of a VFA Agent.

FAQ-3.3 **What is the role and function of the VFA Agent?**

The role and function of the VFA Agent is detailed in Articles 7 and 14 of the Act. In a nutshell, the VFA Agent shall *inter alia*: (i) generally advise and guide his client; (ii) perform a fitness and properness assessment prior to onboarding a client; (iii) act as a point of liaison between the MFSA and his client; and (iv) cooperate with the MFSA, where required. It is also important to note that the VFA Agent shall also be considered as a subject person under the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01 of the Laws of Malta) (‘PMLFTR’).

Acting as 'gatekeepers', VFA Agents will comprise the first line of defense and are therefore required to have the necessary systems and controls to comply with Anti-Money Laundering/Combating the Financing of Terrorism ('AML/CFT') obligations. In this respect, it is noted that there are various solutions available catering for different business models, including *inter alia* the service providers which attended the seminar organised by the MFSA on Due Diligence and Cybersecurity in relation to DLT on 11 September 2018 ([link](#)).

FAQ-3.4 Is authorisation required by the MFSA to perform the activity of a VFA Agent?

Persons wishing to perform the functions listed under Articles 7 and, or 14 of the Act are required to seek registration with the Authority as VFA Agents.

FAQ-3.5 VFA Agents can be registered to perform functions under Articles 7 and, or 14 of the Act. Does this mean that there are three types of VFA Agents?

Yes, there are three types of VFA Agents as follows:

i. VFA Agents appointed in terms of Article 7

Article 7 states that "an issuer is required to appoint, and have at all times in place, a VFA agent".

ii. VFA Agents appointed in terms of Article 14

An application for a licence under this Act shall be made solely through a VFA Agent which is duly registered in terms of this Act.

iii. VFA Agents appointed in terms of Articles 7 and 14

VFA Agents whose registration allows them to be appointed in terms of both Article 7 and 14 may be appointed with both Issuers and applicants for a VFA Services Licence under the Act.

FAQ-3.6 What is the difference between VFA Agents appointed in terms of Article 7 and those appointed in terms of Article 14 of the Act?

A VFA Agent appointed in terms of Article 7 is appointed with an Issuer, whilst the VFA Agent appointed in terms of Article 14 is appointed with an applicant for a VFA Services Licence.

Certain obligations of a VFA Agent under Article 7 are on an ongoing basis and therefore Article 7 requires Issuers to have a VFA Agent in place at all times. Article 14 states that *“an application for a licence under the Act shall be made solely through a VFA Agent”* – and therefore in this respect, the Authority considers that the role of the VFA Agent, when appointed with an applicant for a VFA Services Licence in terms of Article 14, is solely linked to the application process.

FAQ-3.7 What are the main considerations which the MFSA shall be taking into account prior to registering a VFA Agent?

The specific requirements for persons wishing to seek registration as VFA Agents will be detailed in Chapter 1 of the VFA Rulebook.

FAQ-3.8 What does the MFSA consider as adequate due diligence systems and controls?

A VFA Agent is expected to have robust Know Your Client (‘KYC’) systems and controls in place in order to address and mitigate the money laundering/funding of terrorism risks pertaining to their specific business model. It is emphasised that there is no ‘one-size-fits-all’ approach in this respect.

For example, with respect to a VFA Agent onboarding solely clients whose source of wealth and/or funds comprise exclusively of traditional assets (e.g. cash, property etc.), a traditional KYC tool would suffice. On the other hand, where a VFA Agent wishes to onboard clients whose source of wealth and/or funds include/s DLT assets (e.g. bitcoin), such VFA Agent is expected to have an appropriate KYC tool in place in order to verify such source/s. Provided that the examples in this paragraph should be understood as referring only to those instances where a VFA Agent will be required, in terms of the PMLFTR, to establish and verify the source of wealth and source of funds.

FAQ-3.9 Will the MFSA be recommending a specific KYC solution?

No, the Authority will not be endorsing any specific KYC software solutions.

FAQ-3.10 With respect to Issuers, will it solely be the VFA Agent who shall be performing due diligence checks? Will the MFSA be carrying out any further checks?

Issuers are neither registered nor licenced by the Authority. The Act states that *“no issuer shall offer a virtual financial asset to the public in or from within Malta or shall apply for a virtual financial asset’s admission to trading on a DLT exchange”* unless a whitepaper for the particular VFA is registered with the MFSA. The registration requirement is for the whitepaper and not the Issuer. Hence, prior to onboarding an Issuer as its client, a VFA Agent must conduct a fitness and properness assessment thereof.

FAQ-3.11 With respect to applicants for a VFA Services Licence, will it solely be the VFA Agent who shall be performing due diligence checks? Will the VFA Agent’s checks replace those which the MFSA traditionally carries out?

No. Prior to onboarding an applicant for a VFA Services Licence as its client, a VFA Agent must conduct a fitness and properness assessment thereof. The MFSA shall also be carrying out due diligence checks on prospective VFA Services Licence Holders at application stage (i.e. when persons apply for a VFA Services Licence).

FAQ-3.12 Are there any specific rules for VFA Agents?

Yes. Chapter 1 of the VFA Rulebook, will detail the Virtual Financial Assets Rules for VFA Agents. This Chapter was issued for consultation on the 12 July 2018 ([link](#)). The consultation period closed on the 31 July 2018.

The MFSA further issued a *Consultation Paper on raising the bar for VFA Agents* ([link](#)) which outlines possible amendments to the rules proposed in the draft Chapter 1 that was initially issued for consultation.

The MFSA will be taking into consideration all feedback received and shall proceed to issue the final set of rules in due course.

FAQ-3.13 **Is a VFA Agent expected to retain records in relation to clients that it decides not to onboard?**

Yes, a VFA Agent is expected to keep records in relation to clients that it has decided not to onboard.

It is noted that VFA Agents should ensure that any processing of personal data is conducted in accordance with Regulation (EU) 2016/679 (General Data Protection Regulation), the Data Protection Act (Chapter 586 of the Laws of Malta) and any other relevant European Union and national law, as applicable.

FAQ-3.14 **Can a Systems Auditor apply to be a VFA Agent?**

Whereas the Act does not prohibit a Systems Auditor from applying for registration as a VFA Agent, it is noted that such dual appointment should not prevent the said person from exercising independent professional judgement. The MFSA shall be reviewing such applications on a case-by-case basis.

FAQ-3.15 **Can an Issuer or an applicant for a VFA Services Licence appoint the same person as its VFA Agent and Systems Auditor?**

Article 7(1)(g) states that a VFA Agent shall *“not be an employee or otherwise engaged with the issuer in a manner which prohibits him from exercising independent professional judgement and for the avoidance of doubt, persons connected to the VFA Agent shall not be considered as prohibited from exercising independent professional judgement only because other persons in the same organization or activity, including their partners or employees, have been simultaneously engaged to provide legal advice or financial or consultancy or accounting or administrative support services to an issuer”*. Article 14 renders Article 7 *mutatis mutandis* applicable to VFA Agents appointed in terms of article 14. Therefore, the Authority would have no objection to the appointment of the same person as both Systems Auditor and VFA Agent; provided that the Issuer or applicant can demonstrate that such appointments do not impinge on the person’s independent professional judgement.

FAQ-3.16

Can a VFA Agent operating under the transitory provision (i.e. not yet registered) submit applications for registration of whitepapers and/or for prospective VFA licence holders, to the Authority?

Immediately upon the Act coming into force, persons performing the activity under Articles 7 and, or 14, subject to a notification requirement to the Authority, may avail themselves of the transitory period under the Act. Whilst persons availing themselves of the transitory period may continue providing certain services to clients, it is only VFA Agents who are registered who may submit applications to the Authority.

Section 4 Initial Virtual Financial Asset Offerings

FAQ-4.1 What is an Issuer?

Article 2 of the Act states that “issuer” means a legal person duly formed under any law for the time being in force in Malta which issues or proposes to issue virtual financial assets in or from within Malta.

FAQ-4.2 Does an Issuer need to be authorised by the MFSA?

Issuers are neither registered nor licenced by the Authority. The Act states that “no issuer shall offer a virtual financial asset to the public in or from within Malta or shall apply for a virtual financial asset’s admission to trading on a DLT exchange” unless a whitepaper for the particular VFA is registered with the MFSA. The registration requirement is for the whitepaper and not the Issuer.

FAQ-4.3 Are there any fees in relation to the registration of a whitepaper?

Yes, these are detailed in the VFA Regulations to be issued under the Act, together with the applicable supervisory fees.

FAQ-4.4 Are there specific rules for Issuers?

Yes, Chapter 2 of the proposed VFA Rulebook puts forward the rules for Issuers. This Chapter was issued for consultation on the 30 July 2018 ([link](#)). The consultation period closed on the 13 August 2018.

The MFSA further issued a *Consultation Paper on achieving a Higher Degree of Investor Protection under the Virtual Financial Assets Act* ([link](#)) which outlines possible amendments to the rules proposed in the draft Chapter 2 that was initially issued for consultation.

The MFSA will be taking into consideration all feedback received and proceed to issue the final set of rules in due course.

FAQ-4.5 What is the tax treatment for Initial VFA Offerings?

The MFSA is not in a position to provide information on applicable tax treatment for Initial VFA Offerings. Interested parties should liaise with the respective competent authority.

FAQ-4.6 Why does the Act require the Issuer’s financial track record to be disclosed?

The Act applies to initial VFA offerings the high level principles of the Prospectus Regulation¹ in order to ensure that investors are adequately safeguarded. Investor protection is achieved predominantly through transparency. This means that investors need to have all the necessary information in order to be able to make an informed assessment of the prospects of the Issuer, the proposed project and of the features of the VFA.

Whilst a number of Issuers will be start-ups without a financial track record, where such track record is available it should be made available to investors. Reference in this regard is made to paragraph 13 of the First Schedule to the Act where it is stated that where the Issuer has been established for a period exceeding three years, details of its financial track record shall be required to be included in the whitepaper.

FAQ-4.7 Is there a distinction between the requirements for a whitepaper which is required for an Initial VFA Offering and that required for admission to trading on a DLT exchange? Is a whitepaper which is required for admission to trading on a DLT exchange required to state information regarding ‘the offer to the public’ as stated in paragraph 7 of the First Schedule, when the offering period has elapsed?

Article 4 of the Act *inter alia* requires that a whitepaper shall state the matters specified in the First Schedule. Whereas paragraph 7 of the First Schedule is titled ‘The offer to the public’, the proviso to this paragraph also makes reference to an application for admission to trading on a DLT exchange. Furthermore, the said paragraph clearly requires that at least, and to the extent it is applicable, the information required by points (a) to (al) must be disclosed in the whitepaper. In this respect, even for a whitepaper for admission to trading on a DLT exchange, the information required by points (a) to (al) must be disclosed in the whitepaper, insofar as same is applicable. Finally, the

¹ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

proviso to this paragraph further empowers the competent authority to waive or modify any of the requirements put forward within paragraph 7 within the context of a particular initial VFA offering or a particular application for admission to trading on a DLT exchange, as the case may be.

FAQ-4.8

Can an Issuer launch multiple Initial VFA Offerings for the same VFA without having to go through the process of registering a whitepaper for every issue?

Article 3 of the Act provides that an Issuer must draw up and register a whitepaper with the Authority where a virtual financial asset is offered to the public in or from within Malta.

An Issuer can launch multiple initial VFA Offerings as follows:

i. Release of the same VFA in multiple tranches

Where the particulars of such release are disclosed in the original whitepaper and are pre-programmed in the smart contract (where used), the Authority shall consider such offer to constitute a single offering and therefore no additional document would be required to be registered.

ii. Multiple Initial VFA Offerings for the same VFA (not predetermined multiple tranches)

The MFSA shall consider offers subsequent to the original Initial VFA Offering to be a new offer. However it shall only require the registration of a supplement to the original whitepaper pursuant to paragraph 15 of the First Schedule to the Act.

iii. Initial VFA Offerings of different VFAs

The MFSA shall consider such offers to be a new offer whereby a whitepaper will be required to be registered with the MFSA.

FAQ-4.9

Can the same legal entity be used for multiple Initial VFA Offerings?

Yes, the same entity can be used for multiple Initial VFA Offerings. Both for the same and different VFAs. This notwithstanding, it is noted that the Issuer's

board of administration shall be required to be fit and proper for the purposes of every such offering.

FAQ-4.10 **With respect to a VT, is an Issuer obliged to draw up and register a whitepaper with the MFSA?**

No, a DLT asset which is determined to be a VT is not regulated by the Act. There is therefore no requirement to draw up and register a whitepaper for a VT.

FAQ-4.11 **When can I submit a whitepaper for MFSA approval?**

MFSA will only be in a position to consider requests for whitepaper approval under the Act once the Act enters into force on 1 November 2018 and the corresponding framework is in place. This notwithstanding, it is noted that the MFSA will initially be accepting only applications from persons wishing to be registered as VFA Agents in terms of article 7 and/or 14 under the Act. Upon the registration of such persons, the MFSA shall be in a position to start accepting and considering requests for whitepaper approval.

Section 5 VFA Service Providers

FAQ-5.1 What is a VFA Service?

A “VFA service” means any service falling within the Second Schedule of the Act when provided in relation to a DLT asset which has been determined to be a virtual financial asset.

FAQ-5.2 Does the provision of a VFA Service necessitate a licence?

Yes, Article 13(1) of the Act states that *“no person shall provide, or hold itself out as providing, a VFA service in or from within Malta unless such person is in possession of a valid licence granted under this Act by the competent authority”*.

FAQ-5.3 When is the licencing requirement triggered?

A licence is required when a person provides, or holds itself out as providing, a VFA Service, in or from within Malta, in relation to a VFA.

FAQ-5.4 Are there different VFA Service Licence categories? What type of VFA Services Licence would I require?

Yes, there are 4 classes of VFA Services Licences. These are detailed in the VFA Regulations and Chapter 3 of the VFA Rulebook. The class of VFA Services Licence required depends wholly on the type of VFA Service which shall be provided.

FAQ-5.5 Are there any exemptions from the licensing requirement?

Yes, exemptions are detailed in the VFA Regulations.

FAQ-5.6 Can a traditional financial services licence holder apply for a VFA Services Licence under the Act?

The Act requires that the purposes or objects, of a legal person applying for a licence, are limited to acting as a VFA Services Licence Holder and carrying on activities ancillary or incidental thereto, and do not include purposes or objects

which are not compatible with the services of a VFA Service Provider. The Act states that a purpose or object referring to any activity that requires any kind of authorisation whatsoever by the MFSA under any Maltese law, other than the Act, shall be deemed to be incompatible with the services of a VFA Service Provider.

On the basis of the above, it is noted that a traditional financial services licence holder wishing to provide a VFA Service shall be required to establish a separate entity. Likewise, where a VFA Services Licence Holder proposes to engage in business activities which are not listed in the Second Schedule to the Act and are not compatible with its services then, such VFA Services Licence Holder shall be required to establish a separate entity.

FAQ-5.7 Do I need a VFA Agent to apply for a VFA Services Licence?

Yes, Article 14 of the Act is clear in stating that an application for a VFA Services Licence under the Act *“shall be made solely through a VFA Agent which is duly registered in terms of this Act”* in the form and manner required by the MFSA.

FAQ-5.8 What are the criteria to be awarded a VFA Services Licence?

The MFSA shall only grant a VFA Services Licence upon being satisfied that the conditions laid down in Article 15 of the Act have been met and such licence may be general or may be restricted to particular specified VFA Services.

FAQ-5.9 Are VFA Services passportable to other Member States?

VFA Services are not automatically passportable to other Member States. The provision of such services in jurisdictions outside Malta shall be subject to the legislative and regulatory frameworks of those jurisdictions, as well as the prior notification of the MFSA by the VFA Service Provider of its intention to provide its service/s in such jurisdictions.

FAQ-5.10 Are there specific Rules for VFA Service Providers?

Yes, Chapter 3 of the proposed VFA Rulebook, shall detail the Rules for VFA Service Providers. Chapter 3 was issued for consultation on the 31 August 2018 ([link](#)). The consultation period closed on the 14 of September 2018.

The MFSA will be taking into consideration all feedback received and proceed to issue the final set of rules in due course.

FAQ-5.11 Are there any licensing or supervisory fees for VFA service providers?

Yes, licensing and supervisory fees are detailed in the VFA Regulations.

FAQ-5.12 When can I apply for a VFA Services Licence?

MFSA will only be in a position to consider applications under the Act once the Act enters into force and the corresponding framework is in place. This notwithstanding, it is noted that the MFSA will initially be accepting only applications from persons wishing to be registered as VFA Agents in terms of article 7 and/or 14 under the Act. Upon the registration of such persons, the MFSA shall be in a position to start accepting and considering applications for a VFA Services Licence.

FAQ-5.13 Can I perform a VFA Service before the VFA Framework comes into force?

Until the Test is finalised and published on the Authority's website, interested parties are guided to conduct a legal assessment to consider whether the intended activities constitute licensable activities under existing frameworks, or otherwise ('the legal assessment'). Should the intended activities constitute currently-licensable activities, interested applicants are required to follow the ordinary MFSA application process. Activities falling outside the scope of currently-licensable activities, but falling within the scope of the Act, are currently unregulated. That said, the Act provides for a transitional period within which existing operators in the field of VFAs will be expected to comply in full with the requirements emanating from the VFAA framework.

It is recommended that legal advice is obtained from a practitioner with in-depth knowledge of EU and Maltese law on whether the intended activities constitute licensable activities under existing frameworks, the Act, or otherwise.

Once the finalised version of the Test is published by the MFSA, relevant parties are required to undertake the Test in accordance the Guidelines.

FAQ-5.14 **Who may perform custody of VFAs?**

The Second Schedule of the Act includes *inter alia* custodian or nominee services, when provided in relation to a DLT asset which has been determined to be a VFA.

As per Article 13 of the Act, in order to provide such a service, in or from within Malta, an operator would require a VFA Services Licence granted by the MFSA.

FAQ-5.15 **Are there any additional requirements to hold clients' assets?**

Yes, the VFA Regulations propose to impose a number of obligations on 'subject persons' controlling clients' assets. The Regulations define a 'subject person' as "*a person who is in possession of a licence under the Act or is acting under an exemption from the requirement of such a licence in terms of these Regulations*" and 'control of assets' as "*the holding or control of assets belonging to, or on behalf of a customer, by a subject person acting in the course of rendering a VFA service under the Act, and includes custody of assets: Provided that, for the purposes of these regulations, the terms "hold", "control", "safeguard" and "deposit" shall be deemed to encompass private cryptographic keys used in relation to virtual financial assets.*"

The obligations set out therein are analogous to those imposed by MiFID, and, *inter alia*, include, the segregation of clients' assets from assets belonging to the subject person and other clients, the maintenance of adequate records and an obligation to perform reconciliations on a regular basis where clients' assets have been deposited with third parties.

FAQ-5.16 **What is a VFA exchange?**

Article 2 of the Act states that "*"VFA exchange" means a DLT exchange operating in or from within Malta, on which only VFAs may be transacted in accordance with the rules of the platform or facility, which is licensed by the competent authority under this Act to provide such services*".

FAQ-5.17 **What licence is required for a VFA Exchange?**

As proposed in the VFA Regulations, a Class 4 VFA Services Licence is required to operate a VFA exchange.

FAQ-5.18 Can an exchange list both VFAs and financial instruments?

Where a DLT asset qualifies as a financial instrument, traditional financial services legislation would apply. Such a DLT asset would be able to list and trade on a regulated market or a multilateral trading facility or organized trading facility, as defined in MiFID. If a DLT asset is determined to be a VFA, the Act provides for a framework for the regulation of its issue and the exchange platform. MiFID trading platforms that might be interested in listing and trading VFAs, would be required to set up a separate entity solely for this purpose, in relation to which a separate licence under the Act would be required. Similarly, a VFA exchange wishing to list and trade DLT assets qualifying as financial instruments would be required to set up a separate entity for this purpose, in relation to which a separate licence under the respective framework would be required.

FAQ-5.19 Does the Act cover fiat-to-crypto and crypto-to-crypto exchanges?

A VFA exchange is defined under the Act as *“a DLT exchange operating in or from within Malta, on which only virtual financial assets may be transacted...”* It should be understood that it is the VFAs that are transacted ‘on the platform’, to the exclusion of the other DLT asset types; this definition should not thus be interpreted as excluding fiat currencies from its scope. Therefore, the VFA exchange licence under the Act will encompass (i) VFA-to-VFA, (ii) fiat-to-VFA and (iii) VFA-to-fiat transactions.

FAQ-5.20 Are there any specific rules for VFA Exchanges?

Yes, Chapter 3 provides for Supplementary Rules for VFA Exchanges.

Section 6 **AML/CFT Requirements**

FAQ-6.1 Does the Act stipulate any AML/CFT requirements which must be adhered to?

Yes. The Act stipulates that VFA Agents, Issuers and VFA Services Licence Holders are subject persons. The term ‘subject person’ is defined as having the same meaning assigned to it under regulation 2 of the PMLFTR.

FAQ-6.2 Would this mean that a Money Laundering Reporting Officer needs to be appointed?

Yes. The respective chapters of the VFA Rulebook stipulate that VFA Agents, Issuers and Licence Holders must appoint a Money Laundering Reporting Officer.

FAQ-6.3 Does the fact that all VFA services licence holders, VFA Agents and Issuers are to be considered as subject persons go beyond EU Law?

Yes. The requirements set out in the Maltese regulatory framework extend beyond what is required by the EU Fifth Anti-Money-Laundering Directive² (‘5AMLD’) as, whereas 5AMLD brings within the definitional scope of ‘obliged entities’ only (i) custodian wallet providers and (ii) providers engaged in exchange services between VCs and fiat currencies (thus leaving crypto-to-crypto exchanges outside), the Maltese regulatory framework renders as obliged entities VFA Agents, Issuers of virtual financial assets for offer to the public and VFA Service Providers, including also exchanges and service providers involved in VFA-to-VFA transactions. Furthermore, and to the extent that a DLT asset does not qualify as a VFA but as either a financial instrument or electronic money, related service providers would fall to be considered as obliged entities on the basis of the already existing AML/CFT framework.

² Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

Section 7 **Transitory Provisions**

FAQ-7.1 Does the Act provide transitory provisions?

Yes, Article 62 of the Act provides for transitory periods.

FAQ-7.2 Which persons can avail themselves from the transitional provisions?

In order to avail itself of the transitory period, a person must have started undertaking activities in terms of Article 3 of the Act, providing services in terms of Article 13 of the Act or providing the services of a VFA Agent in terms of Article 7 and/or Article 14 of the Act, prior to the coming into force of the Act.

In order for such person to avail itself of the transitory period under the Act, it is noted that mere establishment or registration, either in terms of the Second Schedule to the Civil Code (Chapter 16 Laws of Malta) or any other special law which grants legal personality, would not be deemed sufficient. In case of service providers, such persons would need to be operative prior to the coming into force of the Act. In case of issuers of VFAs, such persons would need to have commenced the offering of the VFA to the public, or the procedure for admission of its VFAs to trading on a DLT exchange, in order to avail from the transitional period.

It should further be understood that such activity would remain unregulated until that time that (i) a whitepaper is drawn up and registered with the Authority in terms of the Act or (ii) a VFA Agent registration or (iii) a VFA Services Licence is obtained (where such persons are determined by the Authority as meeting the prescribed requirements under the Act as well as the VFA Regulations and Rules to be issued thereunder).

Notwithstanding the latter, persons availing themselves of the transitory period are expected to comply with the regulatory requirements under the VFA Framework on a best efforts basis. The MFSA may also require such persons to prepare and submit regular reporting on their activity and service, as it may deem necessary.

FAQ-7.3 **Can a person apply for a transitional period for a VFA service and then expand to other VFA services during the transitional period?**

No. A person will only be in a position to avail itself of the transitional period for services being provided prior to the coming into force of the Act. VFA Services being offered following the coming into force of the Act will need a VFA Services Licence *a priori*.

FAQ-7.4 **Do I need to inform the MFSA to avail from the transitional provisions?**

Yes. Your attention is being drawn to *Circular to Persons Involved in DLT Asset Activity and Services* ([link](#)), more specifically to the [Notification Form](#) for the purposes of Article 62 of the Act ('the Notification Form'). The Authority shall only be taking into consideration notifications submitted using this form.

FAQ-7.5 **By when can I submit the Notification Form to the MFSA?**

The Notification Form shall remain available until the date of the coming into force of the Act.

FAQ-7.6 **Do I need to submit proof of activity/ operations together with the Notification Form?**

Whereas only the Notification Form is required to be submitted with the Authority in order for an entity to avail itself of the transitory provision, without the requirement for any additional supporting documentation, it is noted that the person in relation to which the said form is submitted shall be responsible for the contents included therein.

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MALTA FINANCIAL SERVICES AUTHORITY