

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### *Circular to the Industry on the Consultation Paper on the Financial Instrument Test*

The MFSA [Discussion Paper on Initial Coin Offerings, Virtual Currencies and Related Service Providers](#) (Reference No. 08-2017) ('the Discussion Paper'), issued on 30 November 2017, proposed the introduction of a 'Financial Instrument Test' ('the Test'). The objective of the Test will be that of determining whether a Distributed Ledger Technology ('DLT') asset<sup>1</sup>, based on its specific features, falls within the ambit of either the traditional European and local financial services legislation or the proposed Virtual Financial Assets Act<sup>2</sup> ('VFAA') or is otherwise exempt from regulation.

Citing the need for clarity and legal certainty, the majority of respondents agreed with the MFSA's proposal to introduce the Test. Having carefully considered the feedback received, the MFSA is considering the introduction of the Test as a mandatory requirement under the VFAA, applicable both within the context of an Initial Coin Offering ('ICO') as well as during the intermediation of DLT assets, which may qualify as virtual financial assets. It is proposed that non-licensed persons providing a service or performing an activity in relation to a DLT asset, in or from within Malta, will also be required to conduct the Test to determine the applicable regulatory framework.

As a further step taken by the MFSA towards achieving a comprehensive regulatory framework for the regulation of virtual currencies in Malta with aim of achieving investor protection and market integrity in this field of business, the MFSA is pleased to announce the publication of a [Consultation Paper on the Financial Instrument Test](#) (Reference No. 04-2018). The consultation period shall remain open until the 4 May 2018.

A detailed statement summarising all the feedback received by the MFSA on the Discussion Paper, setting out the MFSA's response and position thereto, will be issued in early course.

Any queries in relation to this circular can be addressed to [fintech@mfsa.com.mt](mailto:fintech@mfsa.com.mt).

**Communications Unit  
Malta Financial Services Authority  
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<sup>1</sup> Previously referred to as Virtual Currency ('VC')

<sup>2</sup> Previously referred to as the Virtual Currencies Act ('VCA')