

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CIRCULAR TO ISSUERS OF VIRTUAL FINANCIAL ASSETS

1 Background

- 1.1 The Virtual Financial Assets Act (Chapter 590 of the Laws of Malta) ('the Act') came into force on 1 November 2018. Persons undertaking an activity in terms of Article 3 of the Act and either [i] availing themselves of the transitory period under Article 62(1)(a) of the Act, or [ii] falling within scope of the exemption under Regulation 3 of the Virtual Financial Assets Regulations (Subsidiary Legislation 590.01 of the Laws of Malta) ('the Regulations') but will continue their offering after the 31 January 2019, are required to draw up a Whitepaper and register it with the MFSA by no later than 31 January 2019.

2 The Transitory Provisions under Article 62(1)(a) of the Act and Exemption Provisions under Regulation 3 of the Regulations

- 2.1 Article 62(1)(a) of the Act states as follows:

"62. (1) Any person who, on the date of the coming into force of this Act –

(a) is undertaking an activity in terms of article 3 shall, within three months from the date of coming into force of this Act, draw up a Whitepaper and register it with the competent authority in terms of the said article:

Provided that this paragraph shall be applicable only to those persons who have commenced an offering or have applied for admission to trading in terms of article 3 by not earlier than two weeks prior to the coming into force of this Act;"

2.1.1 ***"Any person who...is undertaking an activity in terms of article 3"***

It provides a transitory period for any person who, on the date of the coming into force of this Act, is undertaking an activity in terms of Article 3 of the Act. Article 3 of the Act refers to the offering of a virtual financial asset ('VFA') to the public, in or from within Malta, or applying for a VFA's admission to trading on a DLT exchange. An issuer is defined under Article 2(2) as a legal person duly formed under any law for the time being in force in Malta which issues or proposes to issue VFAs in or from within Malta.

2.1.2 “shall within three months, draw up a Whitepaper and register it with the competent authority...”

Any person undertaking an activity under Article 3 of the Act, as explained above, has a three-month period from the date of the coming into force of the Act to draw up a Whitepaper and register it with the MFSA in terms of Article 3 of the Act.

2.2 Regulation 3 of the Regulations states as follows:

“3. The provisions of article 3 of the Act shall not apply to any person who has commenced an offering in terms of article 3 prior to two weeks of the coming into force of the Act:

Provided that the exemption laid down in this regulation shall only apply to those persons whose offering will continue until not later than the 31 January 2019:

Provided further that persons whose offering will continue after the 31st January 2019, shall, by not later than the said date, draw up a Whitepaper and register it with the competent authority in terms of article 3 of the Act.”

2.2.1 “The provisions of article 3 of the Act shall not apply to any person who has commenced an offering in terms of article 3”

It provides an exemption for any issuer who commenced the offering of its virtual financial asset to the public, in terms of Article 3 of the Act, prior to two weeks of the coming into force of the Act; provided that this exemption is applicable only insofar as such offering continues until no later than 31 January 2019. An issuer is defined under Article 2(2) as a legal person duly formed under any law for the time being in force in Malta which issues or proposes to issue VFAs in or from within Malta.

2.2.2 “persons whose offering will continue after the 31st January 2019, shall, by not later than the said date, draw up a Whitepaper and register it with the competent authority in terms of article 3 of the Act.”

Any issuer whose offering continues after the 31 January 2019 shall, similar to issuers availing themselves of the transitory provision as explained above, be required to draw up a Whitepaper and register it with the competent authority in terms of article 3 of the Act by no later than the said date.

3 Registration of a Whitepaper with the MFSA

3.1 Whitepapers pertaining to issuers mentioned under Section 2 of this Circular are to be submitted to the MFSA by 31 January 2019. The Authority will start accepting the submission of Whitepapers of such persons in the coming weeks.

3.2 Issuers mentioned under Section 2 of this Circular are to submit their Whitepapers through a person who is either: [a] registered as a VFA Agent in accordance with Article 7 of the Act; or [b] has submitted an application for registration as a VFA Agent in accordance with Article 7 of the Act, provided that such person shall have at least three proposed Designated Persons who have successfully completed a course approved by the Authority.

4 Preparation for the Online Registration Form for Whitepapers under the Act

4.1 Issuers mentioned under Section 2 of this Circular will be required to submit their Whitepapers through a person specified under Section 3.2 of this Circular ('the Applicants') on an online Registration Form for Whitepapers under the Act ('Whitepaper Registration Form'). The Whitepaper Registration Form will be rolled out in two stages. The first stage of this online form will be released by the MFSA in the coming weeks. Applicants will be required to prepare and submit the first stage of the online Whitepaper Registration Form by 31 January 2019.

4.2 To assist Applicants in the preparation of their submissions, the MFSA has released [Annex I to the Whitepaper Registration Form](#) that will be a mandatory upload in the online form. This file shall be used for the actual application. In this regard, the Applicants shall not tamper with, or modify in any manner this Annex. Should it transpire that this has been tampered with, or modified in any manner, the upload will be disregarded and the submission would not be considered as complete. Any potential improvements should be communicated to the MFSA for consideration. In this Annex, Applicants are requested to provide descriptions in relation to the content of their Whitepaper as per the First Schedule of the Act and to specify the relevant Sections in the Whitepaper within which this content can be found. Together with the said Annex, it is recommended that Applicants prepare the following for their online submissions:

- a Whitepaper drafted in accordance with the Act;
- details of the person appointed in accordance with Section 3.2 of this Circular;
- details of the issuer;
- a populated copy of the final version [Financial Instrument Test](#) ('the Test') of the respective VFA which is duly signed by the person appointed in accordance with the Section 3.2 of this Circular. The Test currently available on the MFSA website is in beta version. The final version of the Test will be released in the coming days;

- evidence of the fitness and properness assessment carried out on the issuer by the person appointed in accordance with Section 3.2 of this Circular, in terms of [Chapter 1 of the Virtual Financial Assets Rulebook](#); and
- the Independent Systems Auditor’s Opinion.

4.3 To note that the above list is not exhaustive and should only serve as guidance for the preparatory phase of the first stage of the online Whitepaper Registration Form.

5 Note to Persons that applied for Registration as a VFA Agent

5.1 It should not be construed that an applicant for a VFA Agent registration through whom a Whitepaper is submitted will be granted an authorisation. The Authority is currently assessing applications submitted for registration as a VFA Agent on a first come first serve basis. The time required for the Authority to accept or refuse an application for registration is wholly dependent on the quality and completeness of the application received and the availability of the proposed designated persons for the competence assessment in terms of R1-2.2.3.3.3 of Chapter 1 of the Virtual Financial Assets Rules.

6 Definitions of ‘Offer of virtual financial assets to the Public’ and ‘Admission to trading on a DLT exchange’

6.1 The Authority will be publishing the definitions for ‘offer of virtual financial assets to the public’ and ‘admission to trading on a DLT exchange’ in the [Glossary of Terms of the Rules](#) in the coming days.

7 Requirement for an MLRO to complete a course approved by the MFSA in accordance with R2-2.4.6.6 of the Virtual Financial Assets Rulebook

7.1 R2-2.4.6.6 reads as follows:

“For purposes of R2-2.4.6.4, individuals proposed as MLROs shall be required to complete a course approved by the Authority, prior to approval. The Authority shall also schedule a mandatory interview with proposed MLROs, and, where it deems it necessary, conduct any further assessment.

Provided that the Authority may also, in its sole discretion, require an interview with any proposed MLRO as it may deem necessary.

Provided further that a proposed MLRO shall be deemed competent by the Authority only where such person satisfies all the aforementioned requirements.”

The Authority shall be issuing a list of approved courses for this purpose in the coming weeks.

8 Future developments and queries

- 8.1** Further updates and developments on the Virtual Financial Assets Framework will be made public on: www.mfsa.com.mt/vfa. Should there be any queries in relation to the above, do not hesitate to contact us on fintech@mfsa.com.mt.

Communications Unit
Malta Financial Services Authority
24 December 2018