

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CIRCULAR TO ISSUERS OF VIRTUAL FINANCIAL ASSETS

1 Background

- 1.1 On 24 December 2018 the MFSA issued a [Circular to Issuers of VFAs](#) providing certain guidelines for the registration of Whitepapers for persons undertaking an activity in terms of Article 3 of the Virtual Financial Assets Act (Chapter 590 of the Laws of Malta) ('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. Such persons are required to draw up a Whitepaper and register it with the MFSA by no later than 31 January 2019.
- 1.2 The circular of today seeks to provide an update to persons specified in Section 1.1 above, specifically with respect to the [i] launch of the Online Registration Form for Whitepapers under the Act, [ii] issuance of the final version of the Financial Instrument Test, and [iii] introduction of new definitions within the [Glossary of Terms](#) of the Virtual Financial Assets Framework.

2 Online Registration Form for Whitepapers under the Act

- 2.1 The [Registration Form for Whitepapers under the Act](#) ('the Whitepaper Registration Form') available online through the [Apply for Authorisation Page](#) under the [Virtual Financial Assets Framework Page](#) shall be duly filled in by the VFA Agent appointed by the Issuer of the Virtual Financial Asset ('VFA') ('the Applicant').
- 2.2 For the purpose of submissions of whitepapers by persons specified in Section 1.1 of this Circular, the term 'VFA Agent' shall refer to a person who either: [a] is 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.

- 2.3 The Whitepaper Registration Form is divided in two stages. The Form available online represents Stage One of the Whitepaper Registration Form.
- 2.4 Stage One of the Whitepaper Registration Form consists of the following Parts, which the VFA Agent should sequentially complete:
- Part 1: Entity Details
 - Part 2: Virtual Financial Asset Details and Whitepaper Details
 - Part 3: Fees and Declaration
- 2.5 In order for the Stage One of the Whitepaper Registration Form to be considered complete, the VFA Agent shall have to submit all the required documentation as identified within the Form.
- 2.6 The MFSA shall be issuing a guidance note on the Whitepaper Registration Form in the coming days to assist VFA Agents and Applicants in the preparation of their submissions.

3 Financial Instrument Test

- 3.1 The MFSA has issued the final version of the [Financial Instrument Test](#) available through the [VFA Framework Page](#). The MFSA shall be issuing an updated Guidance Note to the Financial Instrument Test in the coming days.

4 Definitions added to the Glossary of Terms

- 4.1 The [Glossary of Terms](#) of the VFA Framework has been amended to include definitions for the following terms: Admission to Trading on a DLT exchange; Auditor; Board of Administration; Connected Person; Cyber Security Framework; Experienced Investor; Functionary; Offer of virtual financial assets to the Public; Parent Undertaking; Public Sector Issuer; Regulated Information; Related Parties; Restricted Person; Substantial Unitholder; and Systems Auditor.
- 4.2 The Authority is, specifically drawing attention to the definitions of ‘**offer of virtual financial assets to the public**’, ‘**admission to trading on a DLT exchange**’ and ‘**Systems Auditor**’ due to the relevance to the online Whitepaper Registration Form.

5 Note regarding Systems Auditors

- 5.1 Pursuant to Chapter 2 of the VFA Rulebook, particularly R2-2.4.1.1 and R2-2.4.2.1, Issuers having Innovative Technology Arrangement/s in place are required to appoint and have at

all times in place a Systems Auditor in relation to such Innovative Technology Arrangement/s. Notwithstanding that the definition of a Systems Auditor within the VFA Rulebook mirrors that found under the Innovative Technology Arrangements and Services Act (Chapter 592 of the Laws of Malta), the Authority shall, for the time being, not require Issuers to appoint systems auditors who are registered with the Malta Digital Innovation Authority ('MDIA'). Issuers are only required to appoint a person falling under the definition of a Systems Auditor provided within the [Glossary of Terms](#) of the VFA Framework, provided that such person, in aggregate, meets all of the competence recognition criteria as set out in Section 3 of [Chapter 01, Part A – Systems Auditor Guidelines](#), issued by the MDIA. The MFSA also requires systems audits and reports to be conducted/drafted in accordance with the [MDIA's Guidelines](#).

- 5.2 It is emphasised that the submission of a systems audit and/or report under the VFA Framework by a Systems Auditor as defined under the VFA Rulebook, will have no bearing on whether such person shall be granted registration with the MDIA.

6 Future Developments and Queries

- 6.1 Further updates and developments on the VFA Framework will be made public on: www.mfsa.com.mt/vfa. Queries in relation to the above should be addressed to fintech@mfsa.com.mt.

Communications Unit
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