

CIRCULAR

A STATUS UPDATE ON THE VFA FRAMEWORK

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. The MFSA is currently focusing on the practical implementation of the VFA framework. This circular is intended to provide the industry with a status update in this respect.

2 The Regulatory Framework

- 2.1 Following the publication of the Act and underlying [Virtual Financial Assets Regulations](#) (Subsidiary Legislation 590.01 of the Laws of Malta) ('the Regulations'), the MFSA had proposed, through a consultation, the introduction of a rulebook, titled the 'Virtual Financial Assets Rulebook', subdivided into three chapters as follows:

Chapter 1 | Virtual Financial Assets Rules for VFA Agents

Chapter 2 | Virtual Financial Assets Rules for Issuers of Virtual Financial Assets

Chapter 3 | Virtual Financial Assets Rules for VFA Service Providers

Having considered all feedback received, [Chapter 1](#) and [Chapter 2](#) of Rulebook were finalised and published on the 17 and 30 October 2018, respectively. The Authority expects to publish Chapter 3 in the coming weeks.

The Authority has also published a [Glossary of Terms](#) which provides definitions for the terminology used in Chapters 1 and 2.

3 The Financial Instrument Test

- 3.1 The Authority has issued a [Financial Instrument Test](#) ('the Test') in order to assist users in determining whether a DLT asset qualifies as (i) Electronic Money as defined under the Third Schedule to the Financial Institutions Act (Chapter 376 Laws of Malta), (ii) a Financial Instrument as defined under the Second Schedule to the Investment Services Act (Chapter

370 Laws of Malta) ('ISA'), whether issued in Malta or otherwise, (iii) a Virtual Financial Asset ('VFA') or a Virtual Token ('VT') as defined under the VFA Act.

4 Frequently Asked Questions

4.1 During the past weeks, the Authority has been in receipt of numerous queries with respect to the VFA Framework. In order to provide the industry with the clarifications requested, the MFSA has issued an updated [Frequently Asked Questions on the Virtual Financial Assets Framework](#). The FAQ document will be updated with further Q&As to address the general queries raised by interested parties, as the framework develops.

5 Applications for Authorisation under the VFA Act

5.1 The MFSA started considering applications under the Act as from the date of the coming into force of the Act – i.e. 1 November 2018. At present, the MFSA is only accepting applications from:

- [i] persons wishing to be registered as VFA Agents in terms of the Act; and
- [ii] 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 Regulations but will continue their offering after the 31 January 2019, and who are therefore required to draw up a Whitepaper and register it with the MFSA by no later than 31 January 2019.

Applications may be submitted through the [Apply for Authorisation Page](#) on the MFSA website.

5.2 Applications for registration of VFA Agents

The MFSA has received a number of applications for registration of VFA Agents and these are currently being processed 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. Once registered, VFA Agents will be listed within the MFSA Financial Services Register. Applications for registration of VFA Agents may be submitted at any time.

5.3 Applications for registration of whitepapers of VFAs issued by Issuers operating under the transitory provision

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').

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. With respect to point [b], 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 Whitepaper Registration Form is divided in two stages. The Form available online represents Stage One of the Whitepaper Registration Form.

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

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.

5.4 Going Forward

Upon the registration of the first VFA Agents, the MFSA shall be in a position to start accepting and considering requests for Whitepaper approval for persons not operating under the transitory provision and applications for a VFA Services Licence.

6 Courses approved by the Authority

6.1 VFA Agents approved Courses

The courses approved by the MFSA for the purposes of fulfilling the competence requirements in terms of R1-2.2.3.3.3 of Chapter 1 of the Virtual Financial Assets Rulebook ('the Rules') are available on the following link: [Approved Courses for Proposed Persons](#).

6.2 Courses for MLROs

The Authority shall be issuing a list of approved courses for the purposes of fulfilling the requirements of R2-2.4.6.6 with respect to MLROs in the coming weeks.

7 Note regarding MLROs to be appointed with Issuers

7.1 Chapter 2 of the VFA Rulebook, particularly R2-2.4.6.6 and R2-2.4.6.7 imposes certain requirements on MLROs of Issuers as follows:

R2-2.4.6.6

"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."

R2-2.4.6.7

"Further to R2-2.4.6.4, following approval, MLROs shall be required to obtain a number of CPE hours on an annual basis, as determined by the MFSA."

In this respect the Authority shall adopt the same process as that adopted for MLROs of VFA Agents; however, the list of approved courses (as stated in section 6 above) and the structure of the interview will be different to tailor for the specific activities and underlying risks pertaining to the MLROs of Issuers.

8 Note regarding Systems Auditors

8.1 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.

9 Exemptions requiring an MFSA determination

9.1 Regulation 4(2) of the VFA Regulations reads as follows:

“(2) The exemptions laid down in paragraphs (d), (f), (g) and (o) shall not be automatically operative but their applicability shall be subject to the determination in writing by the competent authority:

Provided that the applicability of the exemption laid down in paragraph (o) shall not exempt such person from satisfying any regulations, rules or authorisation conditions issued by the Authority that such person must satisfy to carry out the service set out in paragraph 5 to the Second Schedule to the Act.”

Therefore, paragraphs (d), (f), (g) and (o) require a determination in writing by the MFSA in order to apply. In this respect, parties who wish to benefit from such exemptions are requested to provide a detailed description of the relevant business model, particularly how it is offering its service/s and a detailed legal assessment/opinion of why the entity should be exempt. The MFSA will then review the documentation submitted and will issue a formal communication of whether the entity is exempt or otherwise.

10 Future developments and Queries

10.1 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.