MFSA MALTA FINANCIAL SERVICES AUTHORITY

VIRTUAL FINANCIAL ASSETS RULEBOOK

CHAPTER 2

VIRTUAL FINANCIAL ASSETS RULES FOR ISSUERS OF VFAS

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CONTENTS

REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
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Title 1 General Scope and High-level Principles

Section 1 Scope and Application

R2-1.1.1 This Chapter shall apply to Issuers of Virtual Financial Assets ('Issuers') in terms of the Virtual Financial Assets Act ('the Act'). It shall also apply to VFA Agents in so far as the particular rule refers to such Agents.

R2-1.1.2 This Title outlines the high-level principles which should guide Issuers in the provision of their Virtual Financial Asset activity in or from within Malta.

R2-1.1.3 Title 2 of this Chapter sets out the requirements which Issuers must adhere to.

R2-1.1.4 Title 3 of this Chapter sets out the initial and ongoing requirements applicable to Initial VFA Offerings and trading of Virtual Financial Assets on DLT exchanges.

R2-1.1.5 Title 4 of this Chapter provides for enforcement and sanctions in the event of misconduct by Issuers.

Section 2 High-Level Principles

R2-1.2.1 Issuers shall act in an ethical manner taking into consideration the best interest of investors and the integrity of Malta's financial system.

R2-1.2.2 Issuers shall act honestly, fairly and professionally and shall comply with, the relevant provisions of the Act, the regulations issued thereunder, and these Rules, as well as with other relevant legal and regulatory requirements, including *inter alia* the Prevention of Money Laundering Act as well as any regulations and rules issued thereunder.

R2-1.2.3 Issuers shall co-operate with the MFSA in an open and honest manner and shall provide the Authority with any information it may require.

R2-1.2.4 In complying with R2-1.2.1, Issuers shall:

i. make reference to, and where applicable comply with the applicable Maltese laws, regulations and rules issued thereunder as well as any Guidance Notes which may be issued by the MFSA or other relevant body to assist the said persons in complying with their legal and regulatory obligations;
ii. cooperate in an open and honest manner with the MFSA and any other relevant regulatory authorities, including the Financial Intelligence Analysis Unit; and

iii. take due account and, where applicable, comply with any relevant EU legislation as well as any Guidance Notes/ Statements/ Industry Best Practices which may be issued by local and, or international standard setting bodies, including any Guidelines or Guidance Notes issued by the Financial Intelligence and Analysis Unit.

Title 2 Requirements for Issuers

Section 1 Scope and Application

R2-2.1.1 This Title sets out the requirements for Issuers and identifies the Functionaries such Issuer must appoint. The obligations of the Issuer towards the said Functionaries are also established.

Section 2 General Requirements

Sub-Section 1 General

R2-2.2.1.1 An Issuer (other than a Public Sector Issuer) must be a legal person duly formed under any law in force in Malta.

R2-2.2.1.2 The Issuer's business shall be effectively directed or managed by at least two individuals in satisfaction of the 'dual control' principle. Such persons shall be capable of demonstrating to the satisfaction of the Authority sufficient knowledge and understanding of the Issuer's business to enable them to discharge their duties.

R2-2.2.1.3 The Issuer shall commence the offering of its Virtual Financial Assets to the public or shall proceed with the admission of its Virtual Financial Assets to trading on a DLT exchange within six months from the date of registration of the whitepaper with the MFSA.

R2-2.2.1.4 In determining whether a DLT asset qualifies as a Virtual Financial Asset, an Issuer of a DLT asset shall, prior to offering such DLT asset to the public in or from within Malta, or applying for its admission on a DLT exchange, undertake the Financial Instrument Test, which shall be signed by its Board of Administration, and endorsed by its VFA Agent in terms of Chapter 1 of this Rulebook.

Provided that the MFSA shall not ordinarily make any determinations of its own with reference to a DLT asset's nature but shall rely on the determinations made by the Issuer and its VFA Agent; it should therefore be understood that in the event of disagreement between the VFA Agent and the Issuer, the matter shall be resolved between the said parties prior to a whitepaper's submission for Registration with the MFSA.

Provided further that the MFSA shall not be accepting any applications where the Issuer's determination has not been endorsed by its VFA Agent.

Sub-Section 2 Compliance Certificate

R2-2.2.2.1 An Issuer shall be required to draw up, on an annual basis, a compliance certificate in relation to its business. Such certificate shall be drawn up by the Issuer, reviewed by the VFA Agent, which VFA Agent shall ensure its completeness and accuracy, and signed by all members of the Issuer's Board of Administration and subsequently submitted to the Authority by the VFA Agent.

R2-2.2.2.2 An Issuer shall ensure that the compliance certificate includes the following:

i. a confirmation that all the local AML/CFT requirements have been satisfied and that the Issuer has adequate systems in place to identify suspicious transactions and to draw up suspicious transaction reports, which confirmation should be obtained from its MLRO;

ii. a confirmation that its Innovative Technology Arrangement complies with any qualitative standards set and guidelines issued by the Malta Digital Innovation Authority applicable to the particular type of arrangement (irrespective of whether the said arrangement holds a certification or a ruling of eligibility under the Innovative Technology Arrangements and Services Act), which confirmation should be obtained from a Systems Auditor;

iii. a statement as to whether the Issuer is a fit and proper person, which statement shall be confirmed by the VFA Agent to the Issuer; and

iv. a statement as to whether there have been any breaches of the Act, the Regulations or these Rules, which statement should be made by its Board of Administrators.

Sub-Section 3 AML/CFT Report

R2-2.2.3.1 The Issuer shall, on an annual basis, engage an independent auditor to draw up a report which shall include:

i. a confirmation that the AML/CFT/KYC systems the Issuer purports to have in place are indeed in place; and

ii. a review of the operations of the Issuer from an AML/CFT perspective.

Sub-Section 4 Disclosures to the Public

R2-2.2.4.1 In accordance with the First Schedule to the Act, the Issuer shall ensure that the whitepaper *inter alia* contains a detailed description of the past and

future milestones including any deliverable in any private placement and its effect of the public offering to the investors.

R2-2.2.4.2 Notwithstanding R2-2.2.4.1, the Issuer shall provide investors with regular and comprehensive updates on the progress being achieved with respect to the milestones set out in the white paper to enable the investor to assess the deliverables in the white paper. Such updates are to be made by means of public announcements.

Provided that where the milestones are not being met, this shall be so stated in the public announcement, together with a detailed explanation therefor and the efforts being made to meet such milestones. In the event that these delays would potentially affect the risk parameters of the project, the Issuer shall also pursuant to his obligations at Law, Update the white paper accordingly and inform the investors of their right to opt out.

R2-2.2.4.3 An Issuer shall ensure that the identity of the Functionaries it appoints in accordance with Section 4 of this Title are appropriately disclosed within the whitepaper.

Provided that where any Functionary is removed or replaced, this shall be so stated in a public announcement.

R2-2.2.4.4 Any disclosure to the public shall be disseminated in a manner which ensures that it is capable of being disseminated to as wide a public as possible.

Sub-Section 5 Supervisory Fees

R2-2.2.5.1 An Issuer shall, upon the submission of the compliance certificate by its appointed VFA Agent, pay to the Authority the applicable supervisory fees in accordance with the Virtual Financial Assets Regulations.

Sub-Section 6 Cap on maximum investable amount

R2-2.2.6.1 An Issuer shall ensure that an investor does not invest more than EUR 5,000 in its Initial VFA Offerings over a 12-month period.

Provided that this Rule shall not apply to Experienced Investors.

Section 3 Board of Administration

R2-2.3.1 The Issuer's Board of Administration shall be responsible for ensuring that the Issuer complies with its obligations under these Rules and any Guidelines which may be issued by the Authority from time to time.

R2-2.3.2 The Board of Administration has, both collectively and on an individual basis, an obligation to acquire and maintain sufficient knowledge and understanding of the Issuer's business to enable them to discharge their duties.

R2-2.3.3 The Board of Administration shall:

i. act honestly and in good faith in the best interests of the Issuer and its investors;

ii. exercise reasonable care, skill and diligence;

iii. exercise the powers they have diligently and in line with applicable law and shall not misuse such powers;

iv. exercise its powers independently and without subordinating such powers to the will of others;

v. continuously monitor the execution of the functions delegated to the Issuer's Functionaries and shall be satisfied that they are performing their functions in accordance with their contractual obligations;

vi. identify and manage the risks of the Issuer and his activities;

vii. continuously monitor compliance with the requirements set out in Sections 5 to 7 of this Title;

viii. avoid conflicts of interest in so far as it is possible and, where it is not, ensure – inter alia by way of disclosure and internal conflicts of interest management procedures – that investors are treated fairly;

ix. establish a good governance framework which inter alia contains provisions on points (v) to (viii) above; and

x. be responsible for the Issuer's compliance with its AML/CFT requirements.

R2-2.3.4 The Board of Administration must not merely carry out a vetting function with regards to all the documents which are submitted for its attention. It is the duty of the Issuer's Board of Administration to inform itself of the Issuer's activities and have a proper understanding of the Issuer's financial condition.

R2-2.3.5 Whilst the Issuer's Board of Administration may be entitled pursuant to its constitutional document/s to delegate particular functions, the delegation

of such functions shall not absolve the Board of Administration from the duty to supervise the discharge of such delegated functions.

R2-2.3.6 The Issuer shall be liable towards its unitholders for any damages incurred by them resulting from its wilful misconduct or negligence, including the failure to perform in whole or in part its obligations.

R2-2.3.7 The Issuer shall ensure that the minutes of the meetings of the Board of Administration are held in Malta at the Issuer's registered address or at any other place as may be agreed with the MFSA.

Section 4 Functionaries

Sub-section 1 General Principles

R2-2.4.1.1 An Issuer shall appoint and have at all times in place the following Functionaries:

i. a Systems Auditor, where required in accordance with R2-2.4.2.1;

ii. a VFA Agent;

iii. a Custodian;

iv. an Auditor; and

v. a Money Laundering Reporting Officer ('MLRO').

R2-2.4.1.2 Notwithstanding R2-2.4.1.1, custody of Virtual Financial Assets may be performed through the use of an Innovative Technology Arrangement (a smart contract) which is duly certified by a Systems Auditor. In such an event, all references to a 'Custodian' (in relation to Virtual Financial Assets) shall, in this Chapter, unless otherwise indicated, be read and construed as a reference to such Innovative Technology Arrangement and the respective rules shall apply to the Innovative Technology Arrangement *mutatis mutandis*.

R2-2.4.1.3 The Issuer shall ensure that its appointed Functionaries:

i. have sufficient knowledge and experience in the field of information technology, DLT assets and their underlying technologies; and

ii. maintain sufficient knowledge and understanding of the Issuer's business to enable them to discharge their functions in a diligent manner.

R2-2.4.1.4 The Issuer shall disclose the identity of the Functionaries it appoints within the whitepaper.
Provided that should any Functionary be removed or replace, such a change shall be immediately disclosed to the public in terms of R2-2.2.4.3.

Sub-section 2 ***Systems Auditor***

R2-2.4.2.1 Pursuant to R2-2.4.1.1, where an Issuer has Innovative Technology Arrangement/s in place, such Issuer shall appoint and have at all times in place a Systems Auditor in relation to such Innovative Technology Arrangement/s.

Provided that, if at any time such Issuer fails to have a Systems Auditor in place, the MFSA shall have the power to appoint a person to fill the vacancy; the fees and charges so incurred being payable by the Issuer.

R2-2.4.2.2 The Issuer shall seek the MFSA's consent prior to the appointment or replacement of a Systems Auditor.

R2-2.4.2.3 The Issuer shall replace its Systems Auditor if requested to do so by the MFSA.

R2-2.4.2.4 The MFSA may object to the proposed appointment or replacement and may require such additional information as it may consider appropriate.

R2-2.4.2.5 The Issuer shall make available to its Systems Auditor any information and explanations he needs to discharge his responsibilities as a Systems Auditor and in order to meet the MFSA's requirements.

R2-2.4.2.6 The Systems Auditor shall be responsible for reviewing and auditing the Issuer's Innovative Technology Arrangement/s, including cyber security arrangements.

Provided that where an Issuer's Innovative Technology Arrangement/s is/are made up of several constituent parts, this requirement shall be deemed to encompass all such parts thereof.

R2-2.4.2.7 The Issuer shall obtain from its Systems Auditor a signed letter of engagement defining clearly the extent of the System Auditor's responsibilities and the terms of his appointment. The Issuer shall confirm in writing to its Systems Auditor its agreement to the terms in the letter of engagement.

R2-2.4.2.8 The letter of engagement shall include terms requiring the Systems Auditor:

i. to provide such information or verification as requested by the MFSA;

ii. to afford another Systems Auditor any assistance as he may require;

iii. to vacate his office if, for any reason, he becomes disqualified to act as Systems Auditor;

iv. to notify the MFSA if he resigns, is removed or not reappointed and of the reasons for his ceasing to hold office. The Systems Auditor shall also be required to advise the MFSA if there are matters he considers should be brought to the attention of the MFSA; and

v. to report immediately to the MFSA any fact or decision of which he becomes aware in his/ her capacity as Systems Auditor of the Issuer which constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the Issuer in or under the Act.

R2-2.4.2.9 The MFSA may at its discretion, cumulatively or alternatively, require a review or audit on the characteristics of the Issuer's Innovative Technology Arrangement/s by another Systems Auditor.

R2-2.4.2.10 The Issuer shall require its Systems Auditor to prepare on an annual basis a systems audit report on its Innovative Technology Arrangement's compliance with any qualitative standards set and guidelines issued by the Malta Digital Innovation Authority ('MDIA') applicable to the particular type of arrangement (irrespective of whether the said arrangement holds a certification or a ruling of eligibility under the Innovative Technology Arrangements and Services Act, Act XXXII of 2018). A copy of this report shall be held in Malta at the Issuer's registered address and made available to the MFSA upon request.

R2-2.4.2.11 The Issuer shall ensure that its Systems Auditor, prior to the commencement of the offering of the Virtual Financial Assets, has prepared a report which covers all aspects of its Innovative Technology Arrangement/s, including *inter alia* checks that the requirements of R2-3.2.2.4 have been satisfied. The Issuer shall require its Systems Auditor to prepare a report to this effect and a copy of such report shall be held in Malta at the Issuer's registered address and made available to the MFSA upon request.

R2-2.4.2.12 Further to R2-2.4.2.11, the Issuer shall also ensure that the Systems Auditor, prior to the commencement of the offering of the Virtual Financial Assets, checks and certifies that nothing in the Innovative Technology Arrangement/s used, including any smart contract to be deployed, shall contain any rights to unilaterally mutate, amend and, or destroy without leaving trace the Innovative Technology Arrangement/s involved, in whole

or in part, including any smart contract thereof. Any intention to change the conditions stipulated in the whitepaper and/or the Innovative Technology Arrangement/s – including any smart contract – involved shall always be notified *a priori* to the Authority and shall not be applied before the Authority grants its approval.

Sub-section 3 ***VFA Agent***

R2-2.4.3.1 Pursuant to R2-2.4.1.1, the Issuer shall appoint and have at all times in place a VFA Agent registered with the MFSA in terms of Chapter 1 of this Rulebook and having the responsibilities outlined therein.

R2-2.4.3.2 The Issuer shall seek the MFSA's consent prior to the replacement of a VFA Agent.

Provided that, the MFSA may object to the proposed replacement and may require such additional information as it may consider appropriate.

R2-2.4.3.3 Where an Issuer appoints more than one VFA Agent, the Issuer shall establish how responsibility is to be allocated and inform the competent authority, in writing, of the respective allocations so made.

R2-2.4.3.4 If at any time the Issuer fails to have a VFA Agent in place, the MFSA shall have the power to appoint a person to fill the vacancy; the fees and charges so incurred being payable by the Issuer.

R2-2.4.3.5 Notwithstanding Rules R2-2.4.1.1 and R2-2.4.3.1, a Public Sector Issuer or an Issuer whose Virtual Financial Assets are unconditionally and irrevocably guaranteed by a State or by a State's regional or local authorities is exempt from the requirement to appoint and have at all times in place a VFA Agent in terms of article 7 of the Act.

R2-2.4.3.6 The Issuer shall ensure that all communications, meetings, notifications and/or submissions to the MFSA are made through its VFA Agent.

R2-2.4.3.7 The Issuer shall, at all times, collaborate in an open and honest manner with its VFA Agent and shall provide the VFA Agent with any information it may require *inter alia* with regards to:

i. any fitness and properness assessment the VFA Agent may be conducting in respect to the Issuer;

ii. the preparation of the compliance certificate in terms of Chapter 1 of this Rulebook; and

iii. the VFA Agent's checks, conducted pursuant to R1-3.3.5, as to whether the Issuer is meeting the milestones communicated to investors and whether the Issuer is making the necessary public disclosures.

R2-2.4.3.8 The Issuer shall *inter alia* provide written confirmations to the VFA Agent that:

i. its Board of Administration has established procedures which provide a reasonable basis for the said Board to make proper judgements as to the prospects and, where applicable, the financial position of the Issuer and, also where applicable, its Group;

ii. to the extent it is applicable, it has provided investors with a roadmap which clearly establishes and sets out milestones for the Initial Virtual Financial Assets Offering;

iii. any profit forecast or estimates have been made after due and careful enquiry; and

iv. financial information presented in any document published by it has been properly extracted from its accounting records.

Provided that the information listed in point (iii) shall also be disclosed in the whitepaper.

Provided further that such confirmations shall only be given after due and careful enquiry by the Issuer's Board of Administration.

Sub-section 4 ***Custodian***

R2-2.4.4.1 Pursuant to R2-2.4.1.1, an Issuer shall appoint an independent third party to act as Custodian for the safekeeping of its assets and investors' funds as follows:

i. for Virtual Financial Assets, with a third party who shall:

a. hold either a licence under this Act to provide the VFA service listed in paragraph 5 of the second Schedule thereto, or is exempt from licensing under regulation 4(1)(o) of the Virtual Financial Assets Regulations; or

b. be constituted in a recognised jurisdiction, provided that the subject person shall disclose to its clients and to the Authority, the arrangements that will be put in place to ensure adequate safekeeping of assets.

ii. For fiat currencies an Issuer, with:

a. a central bank;

b. a credit institution authorised in accordance with the provisions of Directive 2013/36/EU;

c. a bank authorised in a third country;

d. a money market fund;

e. an electronic money institution; or

f. a payment institution.

Provided that for the purposes of paragraphs (e) and (f) of R2-2.4.4.1 (ii), such money shall only be placed with such institutions for purposes encompassed by their respective licences under the Financial Institutions Act.

Provided further that pursuant to R2-2.4.1.2, custody of Virtual Financial Assets may be performed through the use of an Innovative Technology Arrangement (a smart contract) which is duly certified by a Systems Auditor.

R2-2.4.4.2 The Issuer shall seek the MFSA's consent prior to the appointment or replacement of a Custodian or the use of an Innovative Technology Arrangement for purposes of custody of Virtual Financial Assets.
Provided that the MFSA may object to the proposed appointment or replacement or use of Innovative Technology Arrangements and to require such additional information as it may consider appropriate.

R2-2.4.4.3 Where an Issuer appoints a Custodian pursuant to Rules R2-2.4.1.1 and R2-2.4.4.1 or makes use of an Innovative Technology Arrangement for such purposes, the Issuer shall ensure that its Custodian or the Innovative Technology Arrangement being availed of has appropriate systems and controls to ensure that investors' funds are reimbursed if the Initial Virtual Financial Assets Offering is cancelled for any reason whatsoever, including *inter alia* where the set soft cap, as stated in the Issuer's whitepaper, is not reached.

Provided that where an Issuer makes use of an Innovative Technology Arrangement for purposes of custody, the term 'funds' under this Rule shall be read and construed solely as a reference to Virtual Financial Assets.

Sub-section 5 Auditor

R2-2.4.5.1 The Issuer shall appoint and have at all times in place an Auditor approved by the MFSA. The Auditor shall have adequate business organisation, systems, experience and expertise to act as Auditor to an Issuer.

R2-2.4.5.2 The Issuer shall replace its Auditor if requested to do so by the MFSA.

R2-2.4.5.3 The Issuer shall make available to its Auditor any information and explanations he needs to discharge his responsibilities as an Auditor.

R2-2.4.5.4 If at any time the Issuer fails to have an Auditor in office for a period exceeding four weeks, the MFSA shall have the power to appoint a person to fill the vacancy; the fees and charges so incurred being payable by the Issuer.

R2-2.4.5.5 The Issuer shall obtain from its Auditor a signed letter of engagement defining clearly the extent of the Auditor's responsibilities and the terms of his appointment. The Issuer shall confirm in writing to its Auditor its agreement to the terms in the letter of engagement.

R2-2.4.5.6 The letter of engagement shall include terms requiring the Auditor:

i. to provide such information or verification to the MFSA as the MFSA may request;

ii. to afford another Auditor any assistance as he may require;

iii. to vacate his office if, for any reason, he becomes disqualified to act as Auditor;

iv. to notify the MFSA if he resigns, is removed or not reappointed and of the reasons for his ceasing to hold office. The Auditor shall also be required to advise the MFSA if there are matters he considers should be brought to the attention of the MFSA; and

v. to report immediately to the MFSA any fact or decision of which he becomes aware in his/ her capacity as Auditor of the Issuer which constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the Issuer in or under the Act.

R2-2.4.5.7 In respect of each annual accounting period, the Issuer shall require its Auditor to prepare a management letter in accordance with International Standards on Auditing.

R2-2.4.5.8 The MFSA may, at its discretion, cumulatively or alternatively, require a review or audit by another Auditor.

Sub-section 6 Money Laundering Reporting Officer

R2-2.4.6.1 Pursuant to R2-2.4.1.1, the Issuer shall appoint and have at all times in place an MLRO.

Provided that, prior to appointing an MLRO, the Issuer shall formally propose the appointment to the MFSA.

R2-2.4.6.2 When appointing an MLRO, the Issuer shall ensure compliance with the applicable provisions of Part I of the Implementing Procedures as well as any sector-specific Implementing Procedures issued by the Financial Intelligence Analysis Unit in terms of the provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations.

R2-2.4.6.3 The Issuer shall ensure that the role of MLRO is only accepted by individuals who fully understand the extent of responsibilities attached to the role.

R2-2.4.6.4 A person proposed to be appointed as MLRO shall demonstrate and provide reasonable assurance to the satisfaction of the Authority that he is:

i. of good repute as well as of his intentions to act in an honest and trustworthy manner;

ii. competent; and

iii. financially sound.

R2-2.4.6.5 For purposes of R2-2.4.6.4, the term competent shall be interpreted as having an acceptable level of knowledge, professional expertise and experience in terms of (i) the traditional financial services framework, (ii) the regulatory framework developed under the Act, as well as (iii) the Prevention of Money Laundering Act and any regulations and rules issued thereunder.

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.

Section 5 Cyber-Security

R2-2.5.1 An Issuer shall establish a 'Cyber-Security Framework' which shall *inter alia* include:

i. Information and data security roles and responsibilities;

ii. Access management policy;

iii. Sensitive data management policy;

iv. Threats management policy;

v. Business continuity plan;

vi. Response and recovery plan; and

vii. Security education and training.

Provided that this Rule shall be applied depending on the nature, scale and complexity of the Issuer's business.

R2-2.5.2 The Cyber-Security Framework shall comply with internationally recognised cyber security standards and shall be in line with the provisions of the GDPR.

Section 6 Record Keeping

R2-2.6.1 An Issuer shall arrange for documents to be kept to enable MFSA to monitor compliance with the requirements under these Rules.

Provided that the requirements set out in this Section shall be without prejudice to:

i. any other record keeping obligations that the Issuer may have in terms of any other law, rules or regulation; and

ii. the right of any other authority, in terms of applicable law, to access the documents, data or information covered by this Section.

R2-2.6.2 Pursuant to R2-2.6.1, documents shall be kept at the disposal of the MFSA, for at least five years.

Provided that the Authority may request that such documents are kept for a period of up to seven years.

R2-2.6.3 The documents shall be retained in a medium that allows the storage of information in a way accessible for future reference by the MFSA and in such a form and manner that the following conditions are met:

i. the MFSA must be able to access them readily and to reconstitute each key stage of the processing of each transaction;

ii. it must be possible for any corrections or other amendments, and the contents of the documents prior to such corrections or amendments, to be easily ascertained; and

iii. it must not be possible for the documents otherwise to be manipulated or altered.

Section 7 I.T. Infrastructure

R2-2.7.1 The Issuer shall ascertain that its I.T. infrastructure ensures:

i. the integrity and security of any data stored therein;

ii. availability, traceability and accessibility of data; and

iii. privacy and confidentiality;

and is in line with the provisions of the GDPR.

R2-2.7.2 The Issuer shall ensure that its I.T. infrastructure is located in Malta, and/or any EEA member state and/or any other third country jurisdiction wherein the Authority is satisfied that the requirements of R2-2.7.1 can be satisfied.

Provided that where the Issuer's I.T. infrastructure is not located in Malta, or is located in a cloud environment, the Issuer shall ensure that data is replicated real time by virtue of a live replication server located in Malta.

Title 3 Initial VFA Offerings & Trading on DLT exchanges

Section 1 *Scope and Application*

R2-3.1.1 This Title sets out the initial and ongoing requirements applicable to Initial VFA Offerings and trading of Virtual Financial Assets on DLT exchanges.

Section 2 *Preliminary Requirements*

Sub-section 1 *Application*

R2-3.2.1.1 Pursuant to article 3(1) of the Act, no Issuer shall offer a Virtual Financial Asset to the public in or from within Malta or apply for their admission to trading on a DLT exchange unless such Issuer draws up a whitepaper which:

i. complies with the requirements of the Act; and

ii. is registered with the MFSA in accordance with the Act.

R2-3.2.1.2 An Issuer wishing to undertake any (or both) of the activities stated in R2-3.2.1.1 shall submit, through its VFA Agent, the following documents to the MFSA:

i. the whitepaper and any supplementary documentation, duly signed by its Board of Administration;

ii. a copy of the Financial Instrument Test, duly signed by its Board of Administration and endorsed by its appointed VFA Agent;

iii. a confirmation from its Systems Auditor that the Issuer's Innovative Technology Arrangement/s complies with any qualitative standards set and guidelines issued by the MDIA applicable to the particular type of arrangement (irrespective of whether the said arrangement holds a certification or a ruling of eligibility under the Innovative Technology Arrangements and Services Act);

iv. one (1) copy of the Issuer's audited Annual Accounts for each of the last three (3) Financial Years;

v. where the Issuer forms part of a Group of which the Issuer is a member, the consolidated accounts of the Group of which the Issuer is a member for each of the last three (3) financial years prepared in

accordance with either Generally Accepted Accounting Principles and Practice or with equivalent standards;

vi. a certified copy of its constitutional document/s; and

vii. the applicable non-refundable registration fee in terms of the Virtual Financial Assets Regulations.

Provided that where an Issuer and/or Group has/have been established for a period of less than three (3) years, the documents mentioned under points (iv) and (v) above shall be required for such shorter period that the said person(s) has/have been established.

The MFSA may request any additional information it may require when reviewing a whitepaper.

R2-3.2.1.3 Applications shall be vetted by the MFSA. It is entirely at the discretion of the MFSA to accept or reject such applications.

R2-3.2.1.4 The MFSA shall not accept applications by an Issuer who does not demonstrate and provide reasonable assurance to the satisfaction of the Authority that:

i. it is of good repute as well as of its intention to act in an honest and trustworthy manner;

ii. it is financially sound; and

iii. has appropriate systems in place to satisfy its AML/CFT requirements.

R2-3.2.1.5 No application may be entertained by the MFSA unless it is made by, or with the consent of, the Issuer concerned.

Sub-section 2 Whitepaper

R2-3.2.2.1 The whitepaper shall convey factual information about a business in words and figures, and shall serve as a source of information about the Issuer and its proposed activities. The whitepaper shall:

i. be dated;

ii. contain all the information stipulated in the First Schedule to the Act;

iii. be signed by the Issuer's Board of Administration; and

iv. include a statement by the Issuer's Board of Administration that the whitepaper complies with the requirements under the Act, the relevant regulations and these Rules.

R2-3.2.2.2 The MFSA shall allow information to be incorporated in the whitepaper by reference to one or more previously or simultaneously published documents that have been approved by it, provided that:

i. this information shall be the latest information available to the Issuer;

ii. when information is incorporated by reference, a cross-reference list must be provided in order to enable investors to identify easily specific items of information; and

iii. the summary shall not incorporate information by reference.

R2-3.2.2.3 The MFSA may authorise the omission of information from the whitepaper which is applicable and required by these Rules pursuant to paragraph 2 of the First Schedule to the Act on a case by case basis.

R2-3.2.2.4 Where a smart contract is deployed, the Issuer shall ensure that the elements of a whitepaper are coded within the respective smart contract. This shall, where applicable, include *inter alia* coding for:

i. Transfer limitations;

ii. Soft cap and hard cap;

iii. Refund mechanisms;

iv. Dispute resolutions; and

v. Burning protocols.

Section 3 Supplementary Conditions for Virtual Financial Assets admitted to Trading on a DLT Exchange

Sub-section 1 Conditions for admissibility to Trading on a DLT exchange

R2-3.3.1.1 In carrying out the assessment on the suitability of an Issuer's Virtual Financial Assets for admissibility to trading, the MFSA shall adopt a cumulative approach. The Authority may decide that a Virtual Financial Asset has failed the assessment after considering various circumstances, each of which on its own may or would not lead to that conclusion. For this

reason, it is essential that the information provided to the MFSA is truthful, complete and correct.

R2-3.3.1.2 The MFSA may make admissibility subject to any condition it considers appropriate in the best interest of investors and Malta's financial system. The Issuer will be expressly informed of any such case and must comply with such condition/s at all times.

R2-3.3.1.3 Issuers must continue to satisfy the conditions for trading contained in this Section throughout the whole period in which any of their Virtual Financial Assets are admitted to trading on a DLT exchange.

R2-3.3.1.4 The Virtual Financial Assets for which admissibility to trading on a DLT exchange is sought must be expected to enjoy adequate continuity of dealing.

Sub-section 2 Transactions by Restricted Persons and with Related Parties

R2-3.3.2.1 Subject to R2-3.3.2.2 below, an Issuer must require:

i. its Board of Administration or Board of Administration of its Subsidiary or Parent Undertaking; and

ii. any of the Issuer's Officers or employees or an Officer or employee of its Subsidiary or Parent Undertaking who, because of his office or employment in the Issuer or Subsidiary Undertaking or Parent Undertaking, is likely to be in possession of unpublished price-sensitive information in relation to the Issuer;

to comply with an internal code of dealing which encompasses all the requirements set out in this sub-section and must take all proper and reasonable steps to ensure such compliance.

Provided that hereinafter, for purposes of this Chapter, the persons listed in points (i) and (ii) of this Rule shall be referred to as 'Restricted Persons'.

R2-3.3.2.2 R2-3.3.2.1 does not apply if such dealings are entered into by such persons:

i. in the ordinary course of business; or

ii. on behalf of third parties by the Issuer or any other member of its Group.

R2-3.3.2.3 Issuers may, at their discretion, impose more rigorous restrictions upon dealings by Restricted Persons.

R2-3.3.2.4 A Restricted Person shall not deal directly or indirectly in any of the Virtual Financial Assets of the Issuer:

i. at any time when he is in possession of unpublished price-sensitive information in relation to those Virtual Financial Assets;

ii. prior to the announcement of matters of an exceptional nature involving unpublished price-sensitive information in relation to the market price of the Virtual Financial Assets of the Issuer;

iii. without giving advance written notice to one or more other Board of Administration designated for this purpose. In his own case, such designated Administrator shall not deal without giving advance notice to the board of administration of such Issuer or any other designated Administrator as appropriate; or

iv. during such other period as may be established by the MFSA from time to time.

R2-3.3.2.5 The same restrictions apply to dealings by a Restricted Person in the Virtual Financial Assets of any other Issuer when, by virtue of his position in the Issuer, he is in possession of unpublished price-sensitive information in relation to those Virtual Financial Assets.

R2-3.3.2.6 During the period of thirty (30) days immediately preceding any publication of the Issuer's annual results, a Restricted Person shall not purchase any Virtual Financial Assets of the Issuer nor shall he sell any such Virtual Financial Assets.

Provided that the Issuer may allow a Restricted Person to trade on its own account or for the account of a third party during a closed period, on a case-by-case basis, due to the existence of exceptional circumstances, such as severe financial difficulty, which require the immediate sale of Virtual Financial Assets and the Issuer shall immediately notify the Authority accordingly.

R2-3.3.2.7 If the approval of the MFSA to deal in exceptional circumstances has been granted, the Issuer must notify the MFSA of such deals immediately after these have been concluded.

R2-3.3.2.8 The restrictions on dealings contained in this Section shall be regarded as equally applicable to any dealings by any Connected Person or any Licence Holder acting on behalf of a Restricted Person or on behalf of any Connected Person where either he or any Connected Person has assets under management with that Licence Holder. It is the duty of the Restricted Person (as far as is consistent with his duties of confidentiality) to seek to prohibit

any such dealing by any Connected Person at a time when he himself is not free to deal.

R2-3.3.2.9 Where a Restricted Person is acting as a trustee, dealing in the Virtual Financial Assets of the Issuer by that trustee is permitted during the period referred to in R2-3.3.2.6 where:

i. the Restricted Person is not a beneficiary of the trust; and

ii. the decision to deal is taken by the other trustees or by Licence Holders on behalf of the trustees independently of the Restricted Person.

R2-3.3.2.10 No dealings in any Virtual Financial Assets may be effected by or on behalf of an Issuer or any other member of its Group at a time when, under the provisions of this Title, an Administrator of the Issuer would be prohibited from dealing in its Virtual Financial Assets, unless such dealings are entered into:

i. in the ordinary course of business; or

ii. on behalf of third parties by the Issuer or any other member of its Group.

R2-3.3.2.11 The Board of Administration of the Issuer shall be responsible for vetting and approving transactions between an Issuer and a Related Party, which must be entered into at arm's length and on a normal, commercial basis.

R2-3.3.2.12 The Issuer shall disclose all related party transactions *ex post facto* in the annual financial report.

Sub-section 3 Transactions involving Substantial Unitholdings

R2-3.3.3.1 All parties to an offer for an acquisition or disposal of a Substantial Unitholding in an Issuer as well as the Issuer must use every endeavour to prevent the creation of a false market in the Issuer's Virtual Financial Assets. All parties involved in an offer for an acquisition or disposal of a Substantial Unitholding in an Issuer and the Issuer shall ensure that statements are not made which may mislead the market.

Sub-section 4 Regulated Information

R2-3.3.4.1 An Issuer shall file Regulated Information with the MFSA at the same time such information is disclosed to the public in terms of R2-3.3.4.2.

R2-3.3.4.2 When disseminating Regulated Information an Issuer shall ensure that the minimum standards laid down in R2-3.3.4.3 to R2-3.3.4.6 are observed.

R2-3.3.4.3 Regulated Information shall be communicated to the media, as soon as it becomes available, in unedited full text.

Provided that where the Issuer maintains a website, this requirement shall be deemed to be fulfilled if the information communicated to the media indicates on which website the relevant documents are available.

R2-3.3.4.4 Regulated Information shall be communicated to the media in a manner which ensures the security of the communication, minimises the risk of data corruption and unauthorized access, and provides certainty as to the source of the Regulated Information. Security of receipt shall be ensured by remedying as soon as possible any failure or disruption in the communication of Regulated Information.

Provided that the Issuer shall not be responsible for systemic errors or shortcomings in the media to which the Regulated Information has been communicated.

R2-3.3.4.5 Regulated Information shall be communicated to the media in a way which:

i. makes it clear that the information is Regulated Information; and

ii. identifies clearly:

a. the Issuer concerned;

b. the subject matter of the Regulated Information; and
c. the time and date of the communication of the Regulated Information by the Issuer.

R2-3.3.4.6 The Issuer shall not charge investors any specific cost for providing Regulated Information.

Section 4 Cancellation of an Initial Virtual Financial Asset Offering

R2-3.4.1 Where an Initial Virtual Financial Asset Offering is cancelled for any reason whatsoever, including *inter alia* where the set soft cap, as stated in the Issuer's whitepaper, is not reached, the Issuer shall ensure that any funds collected from investors are duly returned thereto. The process shall be monitored by the VFA Agent.

Section 5 *Issuers operating under Article 62 Transitory Provisions*

R2-3.5.1 Issuers benefitting from the transitory provisions provided under Article 62 of the Act shall, in so far as applicable, comply with these Rules on a best efforts basis.

Provided that such an Issuer shall:

i. Engage the services of a person who:

   a. is registered as a VFA Agent in accordance with Article 7 of the Act; or

   b. has the intention to apply for registration as a VFA Agent in accordance with Article 7 of the Act;

   Provided that such person shall have at least two proposed Designated Persons who have successfully completed a course approved by the Authority.

ii. Immediately provide the Authority with a copy of the Financial Instrument Test of the respective Virtual Financial Asset which is duly signed by the service provider specified in (i);

iii. Provide evidence to the Authority that it has successfully passed a fitness and properness assessment, conducted by the service provider specified in (i), in terms of Chapter 1 of this Rulebook; and

iv. Provide evidence to the Authority that it has appropriate systems in place to satisfy the AML/CFT requirements applicable to Issuers.

Title 4 Enforcement and Sanctions

Section 1 *Scope and Application*

R2-4.1.1 This Title provides detail with regards to administrative penalties and sanctions. It *inter alia* provides the principles which guide the MFSA when imposing an administrative penalty and provides for aggravating and mitigating circumstances in case of misconduct by Issuers.

Section 2 *Enforcement and Sanctions*

R2-4.2.1 The Issuer and VFA Agent shall at all times observe the Rules which are applicable to it, as well as all the relative requirements which emanate from the Act and regulations issued thereunder. In terms of the Act, the MFSA has various sanctioning powers which may be used against an Issuer which does not comply with its regulatory obligations. Such powers include the right to impose administrative penalties.

R2-4.2.2 Where an Issuer or a VFA Agent breaches or infringes a Rule, the MFSA may by virtue of the authority granted to it under Article 48 of the Act impose administrative penalties, without recourse to a court of law, up to a maximum of EUR 150,000.

R2-4.2.3 In determining whether to impose a penalty or other sanction, and in determining the appropriate penalty or sanction, the MFSA shall be guided by the principle of proportionality. The MFSA shall, where relevant, take into consideration the circumstances of the specific case, which may *inter alia* include:

i. the repetition, frequency, gravity or duration of the infringement by the Issuer or the VFA Agent;

ii. the degree of responsibility of the person responsible for the infringement;

iii. the financial strength of the Issuer or the VFA Agent;

iv. the profits gained or losses avoided by the Issuer by reason of the infringement, insofar as they can be determined;

v. the losses for third parties caused by the infringement, insofar as they can be determined;

vi. the level of cooperation of the Issuer with the Authority;

vii. previous infringements by the Issuer and prior sanctions imposed by MFSA or other regulatory authorities on the same Issuer;

viii. the good faith, the degree of openness and diligence of the Issuer in the fulfilment of his obligations under the Act, relative regulations and Rules or of decisions of the competent authority in this regard;

ix. any evidence of wilful deceit on the part of the Issuer or its officers or the VFA Agent; and

x. any potential systemic consequences of the infringement.

R2-4.2.4 Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the Issuer or the VFA Agent from its performance, unless the decision of the MFSA explicitly states the contrary.

R2-4.2.5 These Rules stipulate various requirements for the submission of documents within set time-frames. In the instance when such time-frames are not complied with, and unless there are justifiable reasons for the delay, Issuers will be considered as breaching the relevant Rule/s and will be penalised accordingly.

R2-4.2.6 Documents may be submitted in various ways. The date of receipt will be as follows:

i. if it is sent by fax and/or email, the date of receipt recorded shall be the time stamp of the fax and/or email, respectively;

ii. if it is sent by post, this will be the date indicated by the MFSA stamp evidencing receipt; or

iii. if it is delivered by hand, on the date such delivery was made and recorded by MFSA.

R2-4.2.7 The MFSA will use its discretion to decide what action to take in respect of Issuers who do not submit documents by their due date, after taking into consideration the reasons (if any) put forward by the Issuer for the delay.

R2-4.2.8 Late submission gives rise to liability to an initial penalty and an additional daily penalty. If the conditions imposed by MFSA are not met, the Authority reserves the right to take any further action it may deem adequate in the circumstances.

R2-4.2.9 A right of appeal to the Financial Services Tribunal is available to Issuer or VFA Agent on whom penalties are imposed.

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