MFSA MALTA FINANCIAL SERVICES AUTHORITY

VFA RULEBOOK
FREQUENTLY ASKED QUESTIONS

CONTENTS

REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	10 OCTOBER 2018	DOCUMENT ISSUED
1.01	25 JANUARY 2019	AMENDMENT TO FAQ-1.1 ADDITION OF FAQS 2.10, 2.11, 2.17, 3.17 TO 3.28, 4.12 TO 4.26, 5.21 TO 5.25, 7.7 TO 7.10 AND SECTION 8 and 9
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1.03	7 JULY 2021	AMENDMENT OF: - FAQ – 5.12 (APPLYING FOR A VFA SERVICES LICENCE) - FAQ – 5.16 (VFA EXCHANGE DEFINITION) - FAQ – 5.19 (VFA EXCHANGE DEFINITION) - FAQ – 5.23 (VFASP SUPERVISORY FEE CALCULATION) - FAQ – 9.1 (REGISTERING VFA COMPANY) - FAQ – 10.2 (IT AUDIT)

Section 1 The VFA Framework

FAQ-1.1 Can you provide an overview of the framework for Virtual Financial Assets in Malta?

On the 30 November 2017, the MFSA published a *Discussion Paper on Initial Coin Offerings, Virtual Currencies and related Service Providers* ('the Discussion Paper') (link). This followed the general principles set out in a statement issued by ESMA on 13 November 2017 (ESMA50-157-828) (link). As explained in the Discussion Paper, whilst certain Initial Coin Offerings ('ICOs'), DLT assets (previously referred to as Virtual Currencies ('VCs')) and related activities could fall within the scope of existing financial services legislation, others are likely to fall outside scope and would hence be unregulated. The Discussion Paper presented stakeholders with a proposed policy to be adopted by the MFSA for the creation of a high-level principle based regulation, in line with the high level objectives set out by international standard setters, relating to ICOs and the provision of certain services (namely intermediaries that act as brokers, exchanges, investment advisors and market makers) in relation to DLT assets that currently fall outside the scope of existing financial services regulation.

The MFSA received ample positive feedback with respect to the proposed introduction of a new legislative framework regulating ICOs and the provision of certain services in relation to virtual currencies. The MFSA proceeded to draft the Virtual Financial Assets Act (previously referred to as the Virtual Currencies Act and hereinafter referred to as the 'Act') and submitted the Bill to the Government for the initiation of the necessary parliamentary procedures in line with the legislative process. The Act was approved by parliament and was subsequently published on the 20 July 2018 (link). The Act came into force on the 1 November 2018. (link)

On 4 July 2018, the MFSA published a Consultation Paper on the Virtual Financial Assets Regulations to be issued under the Act (link) which presents a draft Legal Notice setting out regulations on: (i) exemptions; (ii) fees; (iii) control of assets; and (iv) administrative penalties and appeals ('the VFA Regulations'). This consultation closed on 20 July 2018. A Feedback Statement was issued on the 24 October 2018 (link). The final regulations have been published. (link)

The Authority followed by preparing the rules underlying and complementing the Act and the VFA Regulations. The rules provide further detailed regulation applicable to operators in this field of financial services. The MFSA proposed the introduction of a rulebook, titled the 'Virtual Financial Assets Rulebook' (the 'VFA Rulebook'), which is subdivided into three chapters as follows: (i) Chapter 1 - Virtual Financial Assets Rules for VFA Agents (link); (ii) Chapter 2 - Virtual Financial

Assets Rules for Issuers of Virtual Financial Assets (link); and (iii) Chapter 3 - Virtual Financial Assets Rules for VFA Service Providers (link).

Furthermore, on the 21 August 2018 the MFSA issued a *Consultation Paper on achieving a Higher Degree of Investor Protection under the Virtual Financial Assets Act* (link). On the 4 September 2018 issued a *Consultation Paper on raising the bar for VFA Agents* (link). The consultation periods for these papers have also closed.

One of the central points for discussion outlined in the Discussion Paper, proposed the introduction of a 'Financial Instrument Test' ('the Test'). The objective of the Test is to determine whether a DLT asset, based on its specific features, is encompassed under (i) the existing EU legislation and the corresponding national legislation, (ii) the Act or (iii) is otherwise exempt. The Test will be applicable both within the context of an ICO as well as during the intermediation of DLT assets by persons undertaking certain activities in relation to such assets in or from within Malta. The Authority issued a *Consultation Paper on the Financial Instrument Test* on 13 April 2018 (link). The Test and a corresponding Guidance note are available through the following: link.

FAQ-1.2 How can I remain abreast with developments on the VFA Framework?

The Authority has set up a specific section on its website where all publications/developments in this sphere shall be uploaded (link).

FAQ-1.3 When will the Act come into force?

The Act came into force on 1 November 2018.

FAQ-1.4 When can I apply for authorisation under the Act?

The MFSA started considering authorisations under the Virtual Financial Assets ('VFA') Act as of 1 November 2018.

The VFA Framework establishes three types of authorisations, being (i) registration of VFA Agents, (ii) registration of Whitepapers, and (iii) licensing of VFA Services Providers.

Persons wishing to either register their Whitepaper or apply as a VFA Services Provider should submit their application through a registered VFA Agent. A list of registered VFA Agents is available on the MFSA's Financial Services Register.

Proposed Persons formally submitted to the MFSA are required to undergo a competence assessment in terms of the VFA Rulebook. A list of approved

courses for each respective role can be found here: Approved Courses for Proposed Persons.

FAQ-1.5 Which activity will fall under the Act?

The following activities are regulated by the Act when conducted in or from within Malta:

i. The offering of a Virtual Financial Asset ('VFA') to the public by an Issuer;

ii. The application, by an Issuer, for a VFA's admission to trading on a DLT Exchange;

iii. The activity of a VFA Agent; and

iv. The provision of VFA services.

FAQ-1.6 Do Collective Investment Schemes wishing to invest in VFAs fall within the scope of the VFA framework?

No, Collective Investment Schemes ('CISs') are regulated under the traditional financial services framework.

In this respect, on the 23 October 2017, the MFSA issued a consultation document on the Proposed Regulatory Framework for Collective Investment Schemes investing in VCs. This consultation was concluded and the MFSA proceeded with the issue of a Feedback Statement on 22 January 2018 summarising the response received from stakeholders and setting out the MFSA's position thereto (link). The MFSA published the supplementary conditions applicable to Professional Investor Funds investing in VCs on 29 January 2018 (link). These rules aim at providing a robust regulatory framework that seeks to ensure investor protection, market integrity and financial soundness with regard to CISs that invest in DLT assets. In order to achieve these objectives, the supplementary conditions introduce specific requirements both during authorisation stage as well as on an ongoing basis thereafter *inter alia* relating to: competence, risk warnings, quality assessment, risk management and valuation.

In the *Circular to the Industry on the Supplementary Conditions applicable to Collective Investment Schemes Investing in Virtual Currencies* issued by the MFSA on 29 January 2018 (link) one may find rules applicable to Professional Investor Funds ('PIFs') (either self-managed or third-party managed) that having an investment objective of investing in VCs. The supplementary conditions applicable to PIFs investing in DLT assets can be found under Part A of the Investment Services Rules for Professional Investor Funds ('the Rules') (link) and under Section 9 of Appendix I to Part B of the Rules (link). The *Feedback*

Statement issued further to industry responses to the MFSA Consultation on the proposed regulation of Collective Investment Schemes investing in Virtual Currencies (link) also refers.

Kindly refer to Part A of the Investment Services Rules for Qualifying Professional Investor Funds (link) and Appendix 1 to Part B of the Rules (link) for the relevant supplementary conditions.

FAQ-1.7 Can a CIS, other than a PIF, invest in VFAs?

No. However the Authority is currently considering whether the published supplementary conditions for PIFs should also be implemented within the context of regulated alternative investment funds and notified alternative investment funds. Any developments in this regard will be made available on the MFSA website.

Section 2 Classification of DLT Assets

FAQ-2.1 What is DLT?

Article 2 of the Act states that *""Distributed Ledger Technology" or "DLT" means a database system in which information is recorded, consensually shared, and synchronised across a network of multiple nodes as further described in the First Schedule of the Innovative Technology Arrangements and Services Act, 2018, whether the same is certified under that Act or otherwise".*

FAQ-2.2 What is a DLT Asset?

Article 2 of the Act states that the term *""DLT asset" means –*

(a) a virtual token;
(b) a virtual financial asset;
(c) electronic money; or
(d) a financial instrument,

that is intrinsically dependent on, or utilises, Distributed Ledger Technology".

FAQ-2.3 **What is a Virtual Token ('VT')?**

Article 2 of the Act defines a VT as a form of digital medium recordation whose utility, value or application is restricted solely to the acquisition of goods or services, either solely within the DLT platform in relation to which it was issued or within a limited network of DLT platforms.

The definition also provides two provisos as follows: (i) for purposes of the definition the term "DLT platform" as referred to therein shall exclude DLT exchanges; and (ii) that a virtual token which is or may be converted into another DLT asset type shall be treated as the DLT asset type into which it is or may be converted.

FAQ-2.4 What is a VFA?

Article 2 of the Act states that a *""virtual financial asset" or "VFA" means any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not -*

(a) electronic money;
(b) a financial instrument; or
(c) a virtual token".

FAQ-2.5 What is electronic money?

Article 2 of the Act states that the term *""electronic money" shall have the same meaning assigned to it under the Third Schedule to the Financial Institutions Act".*

FAQ-2.6 What is a financial instrument?

Article 2 of the Act states that the term *""financial instrument" shall have the same meaning assigned to it under the Second Schedule to the Investment Services Act, whether or not issued in Malta".*

FAQ-2.7 How can I determine whether a DLT Asset is a VT, a VFA, electronic money, or a financial instrument?

The MFSA has issued the Test, the purpose of which is determining whether a DLT asset qualifies as (i) electronic money; (ii) a financial instrument; (iii) a VFA; or (iv) a VT.

The finalised version of the Test, together with complementing Guidelines to the Financial Instrument Test ('the Guidelines') may be found through the following link.

FAQ-2.8 Who should perform the Test?

The Test is applicable to (i) issuers offering DLT assets to the public or wishing to admit such DLT assets on a DLT exchange in or from within Malta; and (ii) persons providing any service and/or performing any activity, within the context of either the VFA Act or traditional financial services legislation, in relation to DLT assets whose classification has not been determined for any reason whatsoever, including *inter alia* because the offering of the said DLT asset was conducted abroad.

The Test shall also be signed by one of the following persons, as applicable, wherein he or she declares their agreement with the determination:

i. the VFA Agent in case of Issuers of initial VFAs offerings;

ii. the compliance officer in case of licence holders under either the VFA Act or traditional financial services legislation; or

iii. the VFA Agent or legal advisor, as applicable, in case of unlicensed persons.

FAQ-2.9 What happens if the DLT asset is determined to be a VT?

Should a DLT asset be determined by the Test to be a VT, any activity performed in relation thereto would remain unregulated.

FAQ-2.10 What if a VT can be converted into another DLT asset type? Would it still be considered as a VT?

The second proviso to the definition of a VT states that *"a VT which is or may be converted into another DLT asset type shall be treated as the DLT asset type into which it is or may be converted"*.

On the basis of the above, it should be understood that in order for a DLT asset to qualify as a VT, its underlying token standard should not allow for either (i) trading outside the DLT platform on or in relation to which it was issued or within a limited network of DLT platforms (which term shall exclude DLT exchanges); or (ii) technical conversion into another DLT asset type. Should any of the above requirements not be satisfied, then such DLT asset would not qualify as a VT.

Notwithstanding the above, for the purposes of technical conversion, the DLT Asset may be based on a token standard which allows for conversion into another DLT asset type, so long as it has technical restriction in place to prevent its conversion into another DLT asset type.

FAQ-2.11 Why does the Test make reference to whether the token standard allows **for the DLT asset's conversion, rather than to whether the DLT asset may** be converted?

The Authority considers that the standard availed of will in itself demonstrate whether the token may be converted. It is therefore necessary for users of the Test to make reference to the token standard being used; and the proviso to the definition of a VT should not be interpreted narrowly.

Notwithstanding the above, for the purposes of technical conversion, the DLT Asset may be based on a token standard which allows for conversion into another DLT asset type, so long as it has technical restriction in place to prevent its conversion into another DLT asset type.

FAQ-2.12 What happens if the DLT asset is determined to be a financial instrument or electronic money?

Should a DLT asset be determined by the Test to be a financial instrument or electronic money, the respective framework would apply. For example, DLT

assets which qualify as financial instruments can only be traded on trading venues falling within scope of MiFID.

FAQ-2.13 Are stable coins considered to be electronic money?

A DLT asset would need to meet all of the requirements of electronic money in order to qualify as electronic money under the Financial Institutions Act. Whereas stable coins may exhibit certain similarities to electronic money, it should not be construed that they automatically qualify as such.

FAQ-2.14 What happens if the DLT asset is determined to be a VFA?

Should a DLT asset not be determined by the Test as (i) a VT, (ii) a financial instrument or (iii) electronic money, such DLT asset would qualify as a VFA. The Act and the VFA Framework would therefore apply.

FAQ-2.15 Will the MFSA be reviewing determinations conducted in terms of the Test?

The MFSA may review the submitted determinations on an *ad hoc* basis. The MFSA may also, by notice in writing to any person, determine that a DLT asset qualifies as a VFA, a VT, electronic money or a financial instrument, and whether or not issued in Malta.

Notwithstanding the above, it should be noted that the onus of assessments with respect to the classification of a DLT asset rests with the person conducting the Test and the respective person endorsing the Test in accordance with the Guidelines.

FAQ-2.16 Will the MFSA be establishing a public register for determinations conducted in terms of the Test?

Yes, the MFSA intends to hold a public register of DLT assets for which a determination has been made, including the classification thereof. Whereas the MFSA will not be taking a position or reviewing such determinations, persons will be allowed to rely on determinations made by others. This notwithstanding, it is noted that persons opting to place reliance on others' determinations still remain responsible.

FAQ-2.17 Given that where a DLT Asset classifies as a VT it would remain unregulated, do I need to submit the determination to the MFSA?

As stated in FAQ-2.16, the MFSA intends to hold a public register of DLT assets for which a determination has been made, including the classification thereof. Should you wish that the specific DLT Asset is included within this register, you may voluntarily forward the determination to the Authority; however this is not a requirement.

Section 3 VFA Agents

FAQ-3.1 What is a VFA Agent?

Article 2 of the Act states that the term *""VFA Agent" means a person registered with the competent authority under this Act and authorised to carry on the profession of:*

(a) advocate, accountant or auditor; or
(b) a firm of advocates, accountants or auditors, or corporate services providers; or
(c) a legal organisation which is wholly owned and controlled by persons referred to in paragraphs (a) or (b),

whether in Malta or in another recognised jurisdiction, or any other class of persons holding authorisations, qualifications and, or experience deemed by the competent authority as possessing suitable expertise to exercise the functions listed under Articles 7 and, or 14" of the Act.

FAQ-3.2 Is it only advocates, accountants, auditors, firms of advocates, accountants or auditors, or corporate services providers; or a legal organisations wholly owned and controlled by such persons who may perform the role of a VFA Agent?

No, Article 2 of the Act also makes explicit reference to any other class of persons holding authorisations, qualifications and, or experience deemed by the competent authority as possessing suitable expertise to exercise the functions of a VFA Agent.

FAQ-3.3 What is the role and function of the VFA Agent?

The role and function of the VFA Agent is detailed in Articles 7 and 14 of the Act. In a nutshell, the VFA Agent shall *inter alia*: (i) generally advise and guide his client; (ii) perform a fitness and properness assessment prior to onboarding a client; (iii) act as a point of liaison between the MFSA and his client; and (iv) cooperate with the MFSA, where required. It is also important to note that the VFA Agent shall also be considered as a subject person under the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01 of the Laws of Malta) ('PMLFTR').

Acting as 'gatekeepers', VFA Agents will comprise the first line of defence and are therefore required to have the necessary systems and controls to comply with Anti-Money Laundering/Combating the Financing of Terrorism ('AML/CFT') obligations. In this respect, is noted that there are various solutions available catering for different business models, including *inter alia* the service

providers which attended the seminar organised by the MFSA on Due Diligence and Cybersecurity in relation to DLT on 11 September 2018 (link).

FAQ-3.4 Is authorisation required by the MFSA to perform the activity of a VFA Agent?

Persons wishing to perform the functions listed under Articles 7 and, or 14 of the Act are required to seek registration with the Authority as VFA Agents.

FAQ-3.5 VFA Agents can be registered to perform functions under Articles 7 and, or 14 of the Act. Does this mean that there are three types of VFA Agents?

Yes, there are three types of VFA Agents as follows:

i. *VFA Agents appointed in terms of Article 7*

   Article 7 states that *"an issuer is required to appoint, and have at all times in place, a VFA agent"*.

ii. *VFA Agents appointed in terms of Article 14*

   An application for a licence under this Act shall be made solely through a VFA Agent which is duly registered in terms of this Act.

iii. *VFA Agents appointed in terms of Articles 7 and 14*

   VFA Agents whose registration allows them to be appointed in terms of both Article 7 and 14 may be appointed with both Issuers and applicants for a VFA Services Licence under the Act.

FAQ-3.6 What is the difference between VFA Agents appointed in terms of Article 7 and those appointed in terms of Article 14 of the Act?

A VFA Agent appointed in terms of Article 7 is appointed with an Issuer, whilst the VFA Agent appointed in terms of Article 14 is appointed with an applicant for a VFA Services Licence.

Certain obligations of a VFA Agent under Article 7 are on an ongoing basis and therefore Article 7 requires Issuers to have a VFA Agent in place at all times. Article 14 states that *"an application for a licence under the Act shall be made solely through a VFA Agent"* – and therefore in this respect, the Authority considers that the role of the VFA Agent, when appointed with an applicant for a VFA Services Licence in terms of Article 14, is solely linked to the application process.

FAQ-3.7 What are the main considerations which the MFSA shall be taking into account prior to registering a VFA Agent?

The specific requirements for persons wishing to seek registration as VFA Agents will be detailed in Chapter 1 of the VFA Rulebook.

FAQ-3.8 What does the MFSA consider as adequate due diligence systems and controls?

A VFA Agent is expected to have robust Know Your Client ('KYC') systems and controls in place in order to address and mitigate the money laundering/funding of terrorism risks pertaining to their specific business model. It is emphasised that there is no 'one-size-fits-all' approach in this respect.

For example, with respect to a VFA Agent onboarding solely clients whose source of wealth and/or funds comprise exclusively of traditional assets (e.g. cash, property etc.), a traditional KYC tool would suffice. On the other hand, where a VFA Agent wishes to on-board clients whose source of wealth and/or funds include/s DLT assets (e.g. bitcoin), such VFA Agent is expected to have an appropriate KYC tool in place in order to verify such source/s. Provided that the examples in this paragraph should be understood as referring only to those instances where a VFA Agent will be required, in terms of the PMLFTR, to establish and verify the source of wealth and source of funds.

FAQ-3.9 Will the MFSA be recommending a specific KYC solution?

No, the Authority will not be endorsing any specific KYC software solutions.

FAQ-3.10 With respect to Issuers, will it solely be the VFA Agent who shall be performing due diligence checks? Will the MFSA be carrying out any further checks?

Issuers are neither registered nor licenced by the Authority. The Act states that "*no issuer shall offer a virtual financial asset to the public in or from within Malta or shall apply for a virtual financial asset's admission to trading on a DLT exchange*" unless a whitepaper for the particular VFA is registered with the MFSA. The registration requirement is for the whitepaper and not the Issuer. Hence, prior to onboarding an Issuer as its client, a VFA Agent must conduct a fitness and properness assessment thereof.

FAQ-3.11 With respect to applicants for a VFA Services Licence, will it solely be the VFA Agent who shall be performing due diligence checks? Will the VFA **Agent's checks replace those which the MFSA traditionally carries out?**

No. Prior to onboarding an applicant for a VFA Services Licence as its client, a VFA Agent must conduct a fitness and properness assessment thereof. The MFSA shall also be carrying out due diligence checks on prospective VFA Services Licence Holders at application stage (i.e. when persons apply for a VFA Services Licence).

FAQ-3.12 Are there any specific rules for VFA Agents?

Yes. Chapter 1 of the VFA Rulebook, will detail the Virtual Financial Assets Rules for VFA Agents. This Chapter was issued for consultation on the 12 July 2018. The consultation period closed on the 31 July 2018.

The MFSA further issued a *Consultation Paper on raising the bar for VFA Agents* (link) which outlines possible amendments to the rules proposed in the draft Chapter 1 that was initially issued for consultation.

The MFSA had taken into consideration all feedback received and proceeded to issue the final set of rules on 17 October 2018 (link).

FAQ-3.13 Is a VFA Agent expected to retain records in relation to clients that it decides not to on-board?

Yes, a VFA Agent is expected to keep records in relation to clients that it has decided not to on-board.

It is noted that VFA Agents should ensure that any processing of personal data is conducted in accordance with Regulation (EU) 2016/679 (General Data Protection Regulation), the Data Protection Act (Chapter 586 of the Laws of Malta) and any other relevant European Union and national law, as applicable.

FAQ-3.14 Can a Systems Auditor apply to be a VFA Agent?

Whereas the Act does not prohibit a Systems Auditor from applying for registration as a VFA Agent, it is noted that such dual appointment should not prevent the said person from exercising independent professional judgement The MFSA shall be reviewing such applications on a case-by-case basis.

FAQ-3.15 Can an Issuer or an applicant for a VFA Services Licence appoint the same person as its VFA Agent and Systems Auditor?

Article 7(1)(g) states that a VFA Agent shall *"not be an employee or otherwise engaged with the issuer in a manner which prohibits him from exercising independent professional judgement and for the avoidance of doubt, persons connected to the VFA Agent shall not be considered as prohibited from exercising independent professional judgement only because other persons in the same organization or activity, including their partners or employees, have been simultaneously engaged to provide legal advice or financial or consultancy or accounting or administrative support services to an issuer"*. Article 14 renders Article 7 *mutatis mutandis* applicable to VFA Agents appointed in terms of article 14. Therefore, the Authority would have no objection to the appointment of the same person as both Systems Auditor and VFA Agent; provided that the Issuer or applicant can demonstrate that such appointments do not impinge on the person's independent professional judgement.

FAQ-3.16 Can a VFA Agent operating under the transitory provision (i.e. not yet registered) submit applications for registration of whitepapers and/or for prospective VFA licence holders, to the Authority?

Immediately upon the Act coming into force, persons performing the activity under Articles 7 and, or 14, subject to a notification requirement to the Authority, may avail themselves of the transitory period under the Act. Whilst persons availing themselves of the transitory period may continue providing certain services to clients, it is only VFA Agents who are registered who may submit applications to the Authority.

FAQ-3.17 How do I apply for registration as a VFA Agent?

Interested parties may apply for registration as VFA Agent through the VFA framework portal on the MFSA website. One may find the necessary guidance therein (link).

FAQ-3.18 With respect to the registration process for VFA Agents, who would need **to submit a Personal Questionnaire ('PQ')?**

As per G2-2.2.1 of the Guidance note on submitting a VFA Agent application (link), applicants are reminded that pursuant to R1-2.2.3.1.3 of Chapter 1 of the VFA Rulebook, the fitness and properness assessment shall be applicable to: (i) the Beneficial Owners and Qualifying Holders, and their Administrators in the case of Direct Qualifying Entities; (ii) the proposed Appointed Persons and (iii) the proposed Designated Persons. As communicated through Circular: The Virtual Financial Assets Act comes into force, issued by the MFSA on 1 November 2018, for purposes of all applications under the VFA framework, only digitised PQ submissions will be considered as valid.

FAQ-3.19 Is there an exam for VFA Agents?

Yes, R1-2.2.3.3.3 states that:

> *"For purposes of R1-2.2.3.3, individuals proposed as Designated Persons shall be required to complete a course approved by the Authority, prior to registration. The Authority shall also schedule a mandatory interview with proposed Designated Persons, and, where it deems it necessary, conduct any further assessment. Where none of the proposed Designated Persons are, or will be, appointed as an Administrator within the structure of the Applicant or the registered VFA Agent, as applicable, any reference to 'Designated Person' under R1-2.2.3.3 shall also be construed as reference to one of Administrators of such Applicant or registered VFA Agent, as applicable.*
>
> *Provided that the Authority may also, in its sole discretion, require an interview with any proposed Appointed Person as it may deem necessary. Provided further that a proposed Designated Person or proposed Appointed Person shall be deemed competent by the Authority only where such person satisfies all the aforementioned requirements".*

FAQ-3.20 Who needs to complete the course approved by the Authority?

As per R1-2.2.3.3.3, designated persons shall be required to complete a course approved by the Authority and where none of the proposed Designated Persons are, or will be, appointed as an Administrator within the structure of the Applicant or the registered VFA Agent, one of the Administrators of such Applicant or registered VFA Agent, as applicable.

FAQ-3.21 Does the Money Laundering Reporting Officer have to complete such a course?

Yes, given that pursuant to R1-2.1.2.3, the Money Laundering Reporting Officer ('MLRO') shall be designated from amongst the VFA Agent's designated persons.

FAQ-3.22 I have successfully completed an approved course. Does that mean I am authorised?

No. The completion of a course approved by the Authority (which shall include an assessment) is only one of the aspects which the MFSA shall be taking into consideration when assessing competence. In fact proposed persons that have

successfully completed an MFSA-approved course will be also called for an MFSA interview and subjected to a further assessment, as deemed necessary.

FAQ-3.23 Where can I find a list of approved courses?

A list of approved courses is available on the Authority's website. (link)

FAQ-3.24 We are interested in providing a course for VFA Agents. How can we get our program approved?

Training providers interested in having their courses approved by the MFSA are to submit a request for approval to the MFSA for this purpose on vfa@mfsa.mt, providing at least the: (i) course content and (ii) information on the certification award mechanism, including: attendance, assessment and grading.

When drafting a course program, interested parties should keep in mind that the Authority interprets competence as competence 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.

FAQ-3.25 I am already registered as a CSP. Can I provide the services of a VFA Agent?

Kindly note that the services provided by CSPs and VFA Agents are distinct – separate registrations are required. Your attention is also drawn to the proviso to R1-2.1.2.2 which states:

> "…
> *Provided that where a person holds any kind of authorisation whatsoever issued by the Authority, such person is expected to establish a separate entity, to be registered as a VFA Agent in accordance with this Title, in order to provide and exercise the functions listed under Article 7 and/or Article 14 of the Act."*

FAQ-3.26 I am already approved as a Listing Agent. Can I provide the services of a VFA Agent?

Kindly note that the services provided by Listing Agents and VFA Agents are distinct – separate authorisations are required. Your attention is also drawn to the proviso to R1-2.1.2.2 which states:

> "…

Provided that where a person holds any kind of authorisation whatsoever issued by the Authority, such person is expected to establish a separate entity, to be registered as a VFA Agent in accordance with this Title, in order to provide and exercise the functions listed under Article 7 and/or Article 14 of the Act."

FAQ-3.27 We are already licenced by the MFSA. Can we provide the services of a VFA Agent?

Kindly note that the services provided by VFA Agents are distinct from services provided by other authorised entities – separate authorisations are required. Your attention is also drawn to the proviso to R1-2.1.2.2 which states:

"...
Provided that where a person holds any kind of authorisation whatsoever issued by the Authority, such person is expected to establish a separate entity, to be registered as a VFA Agent in accordance with this Title, in order to provide and exercise the functions listed under Article 7 and/or Article 14 of the Act."

FAQ-3.28 Can an Auditor apply to be a VFA Agent?

Whereas the Act does not prohibit an Auditor from applying for registration as a VFA Agent, it is noted that such dual appointment should not prevent the said person from exercising independent professional judgement. The MFSA shall be reviewing such applications on a case-by-case basis.

Section 4 Initial Virtual Financial Asset Offerings

FAQ-4.1 What is an Issuer?

Article 2 of the Act states that ""*issuer*" *means a legal person duly formed under any law for the time being in force in Malta which issues or proposes to issue virtual financial assets in or from within Malta*".

FAQ-4.2 Does an Issuer need to be authorised by the MFSA?

Issuers are neither registered nor licenced by the Authority. The Act states that "*no issuer shall offer a virtual financial asset to the public in or from within Malta or shall apply for a virtual financial asset's admission to trading on a DLT exchange*" unless a whitepaper for the particular VFA is registered with the MFSA. The registration requirement is for the whitepaper and not the Issuer.

FAQ-4.3 Are there any fees in relation to the registration of a whitepaper?

Yes, these are detailed in the VFA Regulations to be issued under the Act, together with the applicable supervisory fees.

FAQ-4.4 Are there specific rules for Issuers?

Yes, Chapter 2 of the proposed VFA Rulebook puts forward the rules for Issuers. This Chapter was issued for consultation on the 30 July 2018 (link). The consultation period closed on the 13 August 2018.

The MFSA further issued a *Consultation Paper on achieving a Higher Degree of Investor Protection under the Virtual Financial Assets Act* (link) which outlines possible amendments to the rules proposed in the draft Chapter 2 that was initially issued for consultation.

The MFSA had taken into consideration all feedback received and proceeded to issue the final set of rules on 30 October 2018 (link).

FAQ-4.5 What is the tax treatment for Initial VFA Offerings?

The MFSA is not in a position to provide information on applicable tax treatment for Initial VFA Offerings. Interested parties should liaise with the respective competent authority.

FAQ-4.6 **Why does the Act require the Issuer's financial track record to be disclosed?**

The Act applies to initial VFA offerings the high level principles of the Prospectus Regulation[1] in order to ensure that investors are adequately safeguarded. Investor protection is achieved predominantly through transparency. This means that investors need to have all the necessary information in order to be able to make an informed assessment of the prospects of the Issuer, the proposed project and of the features of the VFA.

Whilst a number of Issuers will be start-ups without a financial track record, where such track record is available it should be made available to investors. Reference in this regard is made to paragraph 13 of the First Schedule to the Act where it is stated that where the Issuer has been established for a period exceeding three years, details of its financial track record shall be required to be included in the whitepaper.

FAQ-4.7 Is there a distinction between the requirements for a whitepaper which is required for an Initial VFA Offering and that required for admission to trading on a DLT exchange? Is a whitepaper which is required for admission to trading on a DLT exchange required to state information **regarding 'the offer to the public' as** stated in paragraph 7 of the First Schedule, when the offering period has elapsed?

Article 4 of the Act *inter alia* requires that a whitepaper shall state the matters specified in the First Schedule. Whereas paragraph 7 of the First Schedule is titled 'The offer to the public', the proviso to this paragraph also makes reference to an application for admission to trading on a DLT exchange. Furthermore, the said paragraph clearly requires that at least, and to the extent it is applicable, the information required by points (a) to (al) must be disclosed in the whitepaper. In this respect, even for a whitepaper for admission to trading on a DLT exchange, the information required by points (a) to (al) must be disclosed in the whitepaper, insofar as same is applicable. Finally, the proviso to this paragraph further empowers the competent authority to waive or modify any of the requirements put forward within paragraph 7 within the context of a particular initial VFA offering or a particular application for admission to trading on a DLT exchange, as the case may be.

FAQ-4.8 Can an Issuer launch multiple Initial VFA Offerings for the same VFA without having to go through the process of registering a whitepaper for every issue?

[1] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

Article 3 of the Act provides that an Issuer must draw up and register a whitepaper with the Authority where a virtual financial asset is offered to the public in or from within Malta.

An Issuer can launch multiple initial VFA Offerings as follows:

i. Release of the same VFA in multiple tranches

Where the particulars of such release are disclosed in the original whitepaper and are pre-programmed in the smart contract (where used), the Authority shall consider such offer to constitute a single offering and therefore no additional document would be required to be registered.

ii. Multiple Initial VFA Offerings for the same VFA (not predetermined multiple tranches)

The MFSA shall consider offers subsequent to the original Initial VFA Offering to be a new offer. However it shall only require the registration of a supplement to the original whitepaper pursuant to paragraph 15 of the First Schedule to the Act.

iii. Initial VFA Offerings of different VFAs

The MFSA shall consider such offers to be a new offer whereby a whitepaper will be required to be registered with the MFSA.

FAQ-4.9 Can the same legal entity be used for multiple Initial VFA Offerings?

Yes, the same entity can be used for multiple Initial VFA Offerings. Both for the same and different VFAs. This notwithstanding, it is noted that the Issuer's board of administration shall be required to be fit and proper for the purposes of every such offering.

FAQ-4.10 With respect to a VT, is an Issuer obliged to draw up and register a whitepaper with the MFSA?

No, a DLT asset which is determined to be a VT is not regulated by the Act. There is therefore no requirement to draw up and register a whitepaper for a VT.

FAQ-4.11 When can I submit a whitepaper for MFSA approval?

MFSA will only be in a position to consider requests for whitepaper approval under the Act once the Act enters into force on 1 November 2018 and the corresponding framework is in place. This notwithstanding, it is noted that the

MFSA will initially be accepting only applications from persons wishing to be registered as VFA Agents in terms of article 7 and/or 14 under the Act. Upon the registration of such persons, the MFSA shall be in a position to start accepting and considering requests for whitepaper approval.

FAQ-4.12 Does Regulation 3 of the VFA Regulations provide for an exemption solely in relation to offerings (which satisfies the conditions set out therein) or would it also include admission to trading?

Regulation 3 of the VFA Regulations reads as follows:

> *"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."*

The Authority envisages the following possible scenarios:

i. An offering which does not satisfy the conditions stipulated in regulation 3 – Given that the offering does not satisfy the stipulated conditions, the exemption would not apply.

ii. An offering which satisfies the conditions stipulated in regulation 3 – In this case the exemption would apply.

iii. An admission to trading where the initial offering satisfies the conditions stipulated in regulation 3 – even though the exemption does not specifically refer to 'admission to trading', the admission to trading is absorbed by the offering, in the sense that the admission to trading would be exempt on the basis of the offering being itself exempt.

iv. An admission to trading where the initial offering does not satisfy the conditions stipulated in regulation 3 – As per point (3) above, the admission to trading would not be exempt, given that the issue itself would not have been exempted.

FAQ-4.13 R2-2.2.6.1 sets out a cap on the maximum investable amount which does not however apply to experienced investors. What is an experienced investor?

As per the Authority's circular of the 30 October 2018 (link), an experienced investor is *"a person who declares to the Issuer that: (i) he is capable of providing evidence that he has already participated in other Initial Virtual Financial Asset Offerings and his initial investment exceeded EUR 10,000 or its equivalent; (ii) he is aware of the risks involved; and (iii) the funds he is contributing to the specific Initial Virtual Financial Asset Offerings does not exceed one per cent of his net worth excluding his main residential home."*

FAQ-4.14 Specifically with respect to safekeeping of VFAs, can issuers make use of the services of a custodian which is benefitting from the transitory period under Article 62?

R2-2.4.4.1 requires that an issuer appoints an independent third party to act as Custodian for the safekeeping of Virtual Financial Assets, with a third party who shall: (i) 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 (ii) 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. An entity operating under the transitory provision does not fall under either of the service providers permitted by R2-2.4.4.1.

FAQ-4.15 Does a multi-signature wallet fulfil the requirements for a third party custodian?

The Authority shall be assessing suitability on a case-by-case basis; however in all circumstances, the Authority shall be ensuring that the requirements set out by the regulatory framework are being met.

FAQ-4.16 Can the third party custodian be an individual (natural person)?

No. The Authority shall not be accepting third party custodians who are natural persons.

FAQ-4.17 Where an Issuer has Innovative Technology Arrangement/s in place, the Issuer is required, by virtue of R2-2.4.2.1, to appoint and have at all times in place a Systems Auditor in relation to such Innovative Technology Arrangement/s. What is the Systems Auditor expected to review? Is the systems auditor expected to review third party platforms?

The Systems Auditor is expected to review the Issuer's Innovative Technology Arrangements. Should the Issuer's Innovative Technology Arrangements be

generated by a third party the Technology arrangement, it is this technology arrangement which would have to be reviewed. The Authority does not however expect the Systems Auditor to review the third party's platform.

FAQ-4.18 With respect to Issuers benefitting from the transitory provisions under Article 62, could the Authority kindly provide further insight vis-à-vis R2-3.5.1, particularly as to whether there are any deadlines for compliance?

R2-3.5.1 reads as follows:

> *"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."*

The Authority expects that issuers benefitting from the transitory provision comply with R2-3.5.1 with immediate effect.

FAQ-4.19 Does an Issuer, which is a not a legal person registered in Malta, need to register a whitepaper?

Article 3(1) of the VFAA states that:

> *"No issuer shall offer a virtual financial asset to the public in or from within Malta or shall apply for a virtual financial asset's admission to trading on a DLT exchange unless such issuer draws up*

a whitepaper which - (a) complies with the requirements of article 4; and (b) is registered in accordance with sub-article (2):

Provided that where a DLT asset is determined by both the issuer and its VFA agent, as appointed by the issuer in terms of article 7(1)(b) to be a financial instrument or electronic money, the issuer shall be required to comply with the respective applicable laws in lieu of the provisions of this Act."

Article 2 defines an Issuer as "*a legal person duly formed under any law for the time being in force in Malta which issues or proposes to issue virtual financial assets in or from within Malta*".

In this respect the offer of VFAs to the public by an issuer who is not be a Maltese legal person and therefore not an Issuer for purposes of the Act would fall outside the scope of the VFA Act. Should a VFA exchange wish to list such an asset, the applicable rules under Chapter 3 of the VFA Rulebook would apply.

FAQ-4.20 With respect to the refund mechanisms referred to in Chapter 2 of the Rulebook, particularly the obligation of an Issuer to ensure that funds collected from investors are duly returned thereto in the event of the cancellation of the Initial Virtual Financial Asset Offering ('IVFAO') for any reason whatsoever, would these apply to investors participating in the private placement/pre-sale of the token?

Private placements/pre-sales would be governed by the agreement entered into between the issuer and the investor. That said, in traditional financial services it is practice that such agreements would make reference to the terms and conditions included in the prospectus and such investors would be refunded in the case that the minimum subscription is not reached. In this respect it would be good practice if the same approach is taken for IVFAOs.

FAQ-4.21 The VFA Act requires that the whitepaper is dated. Could you please confirm which date is to be indicated?

The earliest date which may be included is the date of registration with the MFSA.

FAQ-4.22 With respect to paragraph 7 (c) of the First Schedule, which reads as follows: ***"(c) detailed description of the sustainability and scalability of the proposed project"***, what is meant by sustainability and scalability? Is reference being made to business or technical sustainability and scalability?

The term scalability encompasses the sustainability and scalability of the project as a whole. In this respect both business and technical scalability should be included, to the extent applicable.

FAQ-4.23 With respect to paragraph 7(l) of the First Schedule of the VFA Act, which reads as follows: ***"(l) exchange rate of the virtual financial assets;"***, what is the rate of exchange being referred to?

Where an exchange rate for the VFA, be it crypto-to-crypto or fiat-to-crypto, is available, this should be disclosed.

FAQ-4.24 With respect to paragraph 7 (m) of the First Schedule of the VFA Act, which **reads as follows: "**(*m) description of the underlying **protocol's** interoperability with other protocols;***"***, what is meant by the phrase the **underlying protocol's interoperability with other protocols?**

In this respect it is the interoperability of the underlying protocol being used which should be described and not the whole Blockchain.

FAQ-4.25 In a scenario where a company, which has issued an asset which would qualify as a VFA outside Malta, wishes to relocate to Malta, and the issue would have been finalised: (i) would the company need to register the Whitepaper in Malta following its relocation?; and (ii) Would the conclusion change if the VFA has been, or is being, admitted to trading on a DLT exchange outside Malta?

Article 3(1) of the VFAA states that:

> *"No issuer shall offer a virtual financial asset to the public in or from within Malta or shall apply for a virtual financial asset's admission to trading on a DLT exchange unless such issuer draws up a whitepaper which - (a) complies with the requirements of article 4; and (b) is registered in accordance with sub-article (2):*
>
> *Provided that where a DLT asset is determined by both the issuer and its VFA agent, as appointed by the issuer in terms of article 7(1)(b) to be a financial instrument or electronic money, the issuer shall be required to comply with the respective applicable laws in lieu of the provisions of this Act."* Article 2 then defines as issuer as *"a legal person duly formed under any law for the time being in force in Malta which issues or proposes to issue virtual financial assets in or from within Malta"*.

Therefore:

i. Given that the issuance would be finalised and the Issuer would no longer be offering a VFA to the public in or from within Malta, there would be no requirement to register the whitepaper.

ii. Given that the definition of Issuer under Article 2 reads as follows: *""issuer" means a legal person duly formed under any law for the time being in force in Malta which issues or proposes to issue virtual financial assets in or from within Malta;*"[emphasis added], the requirement to register a whitepaper would still not be triggered.

FAQ-4.26 Where the exemptions provided under the VFA Regulations are not automatically operative but are subject to an MFSA determination, what documentation do we have to submit to the Authority for it to provide this determination?

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 company 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.

Section 5 VFA Service Providers

FAQ-5.1 What is a VFA Service?

Article 2 of the Act states that a *""VFA service" means any service falling within the Second Schedule of the Act when provided in relation to a DLT asset which has been determined to be a virtual financial asset*".

FAQ-5.2 Does the provision of a VFA Service necessitate a licence?

Yes, Article 13(1) of the Act states that *"no person shall provide, or hold itself out as providing, a VFA service in or from within Malta unless such person is in possession of a valid licence granted under this Act by the competent authority"*.

FAQ-5.3 When is the licencing requirement triggered?

A licence is required when a person provides, or holds itself out as providing, a VFA Service, in or from within Malta, in relation to a VFA.

FAQ-5.4 Are there different VFA Service Licence categories? What type of VFA Services Licence would I require?

Yes, there are 4 classes of VFA Services Licences. These are detailed in the VFA Regulations and Chapter 3 of the VFA Rulebook. The class of VFA Services Licence required depends wholly on the type of VFA Service which shall be provided.

FAQ-5.5 Are there any exemptions from the licensing requirement?

Yes, exemptions are detailed in the VFA Regulations.

FAQ-5.6 Can a traditional financial services licence holder apply for a VFA Services Licence under the Act?

The Act requires that the purposes or objects, of a legal person applying for a licence, are limited to acting as a VFA Services Licence Holder and carrying on activities ancillary or incidental thereto, and do not include purposes or objects which are not compatible with the services of a VFA Service Provider. The Act states that a purpose or object referring to any activity that requires any kind of authorisation whatsoever by the MFSA under any Maltese law, other than the Act, shall be deemed to be incompatible with the services of a VFA Service Provider.

On the basis of the above, it is noted that a traditional financial services licence holder wishing to provide a VFA Service shall be required to establish a separate entity. Likewise, where a VFA Services Licence Holder proposes to engage in business activities which are not listed in the Second Schedule to the Act and are not compatible with its services then, such VFA Services Licence Holder shall be required to establish a separate entity.

FAQ-5.7 Do I need a VFA Agent to apply for a VFA Services Licence?

Yes, Article 14 of the Act is clear in stating that an application for a VFA Services Licence under the Act "*shall be made solely through a VFA Agent which is duly registered in terms of this Act*" in the form and manner required by the MFSA.

FAQ-5.8 What are the criteria to be awarded a VFA Services Licence?

The MFSA shall only grant a VFA Services Licence upon being satisfied that the conditions laid down in Article 15 of the Act have been met and such licence may be general or may be restricted to particular specified VFA Services.

FAQ-5.9 Are VFA Services passportable to other Member States?

VFA Services are not automatically passportable to other Member States. The provision of such services in jurisdictions outside Malta shall be subject to the legislative and regulatory frameworks of those jurisdictions, as well as the prior notification of the MFSA by the VFA Service Provider of its intention to provide its service/s in such jurisdictions.

FAQ-5.10 Are there specific Rules for VFA Service Providers?

Yes, Chapter 3 of the proposed VFA Rulebook, shall detail the Rules for VFA Service Providers. Chapter 3 was issued for consultation on the 31 August 2018 (link). The consultation period closed on the 14 of September 2018.
The MFSA had taken into consideration all feedback received and proceeded to issue the final set of rules on 25 February 2019 (link).

FAQ-5.11 Are there any licensing or supervisory fees for VFA service providers?

Yes, licensing and supervisory fees are detailed in the VFA Regulations.

FAQ-5.12 How can I apply for a VFA Services Licence?

The MFSA has set up the role of the VFA Agent, whose role is geared towards assisting prospective applicants and liaise with the authority on your behalf throughout the application process. The VFA Agent will assist you, *inter alia*, in establishing whether the proposed activity triggers the licencing requirement through the Financial Instrument Test ('FIT'), gather the required documentation as well as provide ad hoc legal advice.

A list of registered VFA Agents may be accessed through the Financial Services Register on the MFSA's website.

FAQ-5.13 [Deleted]

FAQ-5.14 Who may perform custody of VFAs?

The Second Schedule of the Act includes *inter alia* custodian or nominee services, when provided in relation to a DLT asset which has been determined to be a VFA.

As per Article 13 of the Act, in order to provide such a service, in or from within Malta, an operator would require a VFA Services Licence granted by the MFSA.

FAQ-5.15 **Are there any additional requirements to hold clients' assets?**

Yes, the VFA Regulations propose to impose a number of obligations on 'subject persons' controlling clients' assets. The Regulations define a 'subject person' as "*a person who is in possession of a licence under the Act or is acting under an exemption from the requirement of such a licence in terms of these Regulations*" and 'control of assets' as "*the holding or control of assets belonging to, or on behalf of a customer, by a subject person acting in the course of rendering a VFA service under the Act, and includes custody of assets: Provided that, for the purposes of these regulations, the terms "hold", "control", "safeguard" and "deposit" shall be deemed to encompass private cryptographic keys used in relation to virtual financial assets*."

The obligations set out therein are analogous to those imposed by MiFID, and, *inter alia*, include, the segregation of clients' assets from assets belonging to the subject person and other clients, the maintenance of adequate records and an obligation to perform reconciliations on a regular basis where clients' assets have been deposited with third parties.

FAQ-5.16 What is a VFA exchange?

Article 2 of the Act states that *""VFA exchange" means a DLT exchange operating in or from within Malta, within which multiple third party buying and selling interests for virtual financial assets can interact in a manner that results in a contract, by exchanging one virtual financial asset for another or a virtual financial asset for fiat currency that is legal tender or a fiat currency that is legal tender for a virtual financial asset"*.

FAQ-5.17 What licence is required for a VFA Exchange?

A Class 4 VFA Services Licence is required to operate a VFA exchange.

FAQ-5.18 Can an exchange list both VFAs and financial instruments?

Where a DLT asset qualifies as a financial instrument, traditional financial services legislation would apply. Such a DLT asset would be able to list and trade on a regulated market or a multilateral trading facility or organized trading facility, as defined in MiFID. If a DLT asset is determined to be a VFA, the Act provides for a framework for the regulation of its issue and the exchange platform. MiFID trading platforms that might be interested in listing and trading VFAs, would be required to set up a separate entity solely for this purpose, in relation to which a separate licence under the Act would be required. Similarly, a VFA exchange wishing to list and trade DLT assets qualifying as financial instruments would be required to set up a separate entity for this purpose, in relation to which a separate licence under the respective framework would be required.

FAQ-5.19 Does the Act cover fiat-to-crypto and crypto-to-crypto exchanges?

A VFA exchange is defined under the Act as "*a DLT exchange operating in or from within Malta, within which multiple third party buying and selling interests for virtual financial assets can interact in a manner that results in a contract, by exchanging one virtual financial asset for another or a virtual financial asset for fiat currency that is legal tender or a fiat currency that is legal tender for a virtual financial asset*…" It should be understood that it is the VFAs that are transacted 'on the platform', to the exclusion of the other DLT asset types. This definition should not thus be interpreted as excluding fiat currencies from its scope. Therefore, the VFA exchange licence under the Act will encompass (i) VFA-to-VFA, (ii) fiat-to-VFA and (iii) VFA-to-fiat transactions.

FAQ-5.20 Are there any specific rules for VFA Exchanges?

Yes, Chapter 3 provides for Supplementary Rules for VFA Exchanges.

FAQ-5.21 With respect to the authorisation process, when can we start operating? **Can we operate once we get the 'in principle approval' from the** Authority?

As per Article 13 of the VFA Act, *"No person shall provide, or hold itself out as providing, a VFA service in or from within Malta unless such person is in possession of a valid licence granted under this Act by the competent authority…"* [emphasis added]. An 'in principle approval' would not be sufficient – it is a licence which is required.

FAQ-5.22 Which are the different licence classes? Are these cumulative?

There are 4 licence classes which are set out in the VFA Regulations as follows:

VFAA Class 1	Licence holders authorised to receive and transmit orders and/ or provide investment advice in relation to one or more virtual financial assets and/ or the placing of virtual financial assets. Class 1 Licence Holders are not authorised to hold or control clients' assets or money.
VFAA Class 2	Licence holders authorised to provide any VFA service but not to operate a VFA exchange or deal for their own account. Class 2 Licence Holders may hold or control clients' assets or money in conjunction with the provision of a VFA Service.
VFAA Class 3	Licence holders authorised to provide any VFA service but not to operate a VFA exchange. Class 3 Licence Holders may hold or control clients' assets or money in conjunction with the provision of a VFA Service.
VFAA Class 4	Licence holders authorised to provide any VFA service. Class 4 Licence Holders may hold or control clients' assets or money in conjunction with the provision of a VFA Service.

The classes are cumulative.

FAQ-5.23 How do I calculate the applicable supervisory fees?

The methodology for calculating the applicable fees is set out in the Virtual Financial Assets Regulations and is the same as that used for Investment Services Licence Holders.

The Supervisory Fee Sheet of the Audited Annual VFASP Return contains an automated fee calculator for Licence Holders.

FAQ-5.24 What if I require to perform other ancillary activity in order to provide VFA services? Do I require a licence?

The VFA Framework does not cater for ancillary services. Interested parties are guided to perform a legal assessment as to whether any activity they wish to perform is licensable or otherwise.

FAQ-5.25 Once licenced as a VFA service provider, can I provide services outside of Malta?

It is emphasised that the provision of services in a country outside Malta shall be subject to the laws of that country.

FAQ-5.26 What are some of the factors which may be considered when assessing the quality of a VFA for the purpose of R3-3.2.2.1.2?

When assessing the quality of a VFA, the Licence Holder may take into account *inter alia* the following factors:

i. The issuer's AML/CFT and cybersecurity systems and controls at the time of the initial virtual financial asset offering;
ii. The availability of a reliable multi-signature hardware wallet solution for the asset;
iii. The protocol and the underlying infrastructure, including *inter alia* whether it is: (i) a separate Blockchain with a new architecture system and network or it leverages an existing Blockchain for synergies and network effects, (ii) scalable, (iii) new and/or innovative or (iv) the VFA has an innovative use case or application;
iv. The relevant consensus protocol;
v. The Systems Auditor's report on the Issuer's Innovative Technology Arrangement, including any reservations that may have been expressed therein;
vi. Developments in markets in which the issuer operates;
vii. The geographic distribution of the VFA and the relevant trading pairs, if any;
viii. The completeness and reliability of information included in the project website and/or whitepaper, including *inter alia* whether an ethical or professional code of conduct exists;
ix. Whether the VFA has any built-in anonymization functions;
x. Whether the VFA has used or was used with any smurfing technology, mixers or has been traded on any Dark Net marketplaces;
xi. Whether the VFA has any built-in mechanism which caters for settlement failure, such as resolution mechanisms;
xii. Other DLT exchanges on which the VFA is traded, if any; and
xiii. Social media information, including *inter alia* official website, Telegram, Twitter account and Facebook page.

FAQ-5.27 What kind of information should be included in the Bye-Laws?

The bye-laws should include *inter alia* sections on:

i. The administration of the Licence Holder, including but not limited to governance, compliance and risk management;
ii. How the Licence Holder operates, including the client onboarding procedure. The procedure for the listing of VFAs, trading procedures, pre- and post-trade transparency, market monitoring, custody and safekeeping arrangements, record keeping, and fees;
iii. The reporting of suspicious transactions;
iv. Settlement and resolution mechanisms in the event of settlement failure;
v. Suspension and removal from trading;
vi. The tests which the Licence Holder carries out on its systems on a periodic basis;
vii. Business continuity; and

Disciplinary action which the Licence Holder can take against its clients.

FAQ-5.28 In what situations can the MFSA request that a Licence Holder hold additional capital?

The Licence Holder may be required by the Authority to hold additional capital to that referred to in R3-3.3.4.1
where:

i. There is a change in the business of a Licence Holder that the Authority considers to be material;
ii. During the Authority's supervisory review process, it is concluded that a Licence Holder is in one of the following situations:
    a. The Licence Holder is exposed to risks or elements of risks that are not covered or not sufficiently covered by the capital requirement set out in R3-3.3.4.1;
    b. the Licence Holder does not meet the requirements set out in Sub-section 7 of this Section and Sub-section 3, Section 1, Title 3 of this Chapter and other administrative measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe;
    c. the prudential valuation of the trading book is insufficient to enable the licence holder to sell or hedge out its positions within a short period without incurring material losses under normal market conditions; or
    d. the Licence Holder repeatedly fails to establish or maintain an adequate level of additional capital to ensure that (i) cyclical economic fluctuations do not lead to a breach of the requirements laid out in this Section; or (ii) the capital requirement can absorb the potential losses and risks identified pursuant to the Authority's supervisory review process.

FAQ–5.29 What kind of courses may the MFSA request Compliance Officers and Money Laundering Reporting Officers to undergo in terms of R3-2.2.3.3.4?

The MFSA may request that individuals proposed as Compliance Officers and Money Laundering Reporting Officers complete a course approved by the Authority prior to licensing.

Below is a list of courses which are approved the Authority:

i. CAMS certification; and
ii. Any other courses which the Authority may approve from time to time.

Section 6 AML/CFT Requirements

FAQ-6.1 Does the Act stipulate any AML/CFT requirements which must be adhered to?

Yes. The Act stipulates that VFA Agents, Issuers and VFA Services Licence Holders are subject persons. The term 'subject person' is defined as having the same meaning assigned to it under regulation 2 of the PMLFTR.

FAQ-6.2 Would this mean that a Money Laundering Reporting Officer needs to be appointed?

Yes. The respective chapters of the VFA Rulebook stipulate that VFA Agents, Issuers and Licence Holders must appoint a Money Laundering Reporting Officer.

FAQ-6.3 Does the fact that all VFA services licence holders, VFA Agents and Issuers are to be considered as subject persons go beyond EU Law?

Yes. The requirements set out in the Maltese regulatory framework extend beyond what is required by the EU Fifth Anti-Money-Laundering Directive[2] ('5AMLD') as, whereas 5AMLD brings within the definitional scope of 'obliged entities' only (i) custodian wallet providers and (ii) providers engaged in exchange services between VCs and fiat currencies (thus leaving crypto-to-crypto exchanges outside), the Maltese regulatory framework renders as obliged entities VFA Agents, Issuers of virtual financial assets for offer to the public and VFA Service Providers, including also exchanges and service providers involved in VFA-to-VFA transactions. Furthermore, and to the extent that a DLT asset does not qualify as a VFA but as either a financial instrument or electronic money, related service providers would fall to be considered as obliged entities on the basis of the already existing AML/CFT framework.

[2] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

Section 7 Transitory Provisions [Deleted]

Section 8 Authorisation Process under the VFA Act

FAQ-8.1 I have already submitted a PQ with the Authority. Do I still need to submit a digitised PQ?

As per the Authority's circular of the 1 November (link), for the purposes of all applications under the VFA Framework, only digitised Personal Questionnaire submissions will be considered as valid. Paper-based submissions will not be accepted for this purpose. The Authority wishes to clarify that individuals that have previously submitted a Personal Questionnaire to the Authority shall be required to submit a new digitised Personal Questionnaire for the purposes of the application for registration as a VFA Agent

FAQ-8.2 Can a PQ be submitted for a preliminary assessment?

No. The Authority shall not be assessing PQs on a preliminary basis in order to provide indications as to whether a person is fit and proper.

Section 9 Registering a Company to perform activity under the VFA Act

FAQ-9.1 We wish to register a company which shall be performing activity within the VFA sphere. What is the procedure?

Companies are to be registered with the Malta Business Registry ('MBR') upon receipt of the in-principle approval in terms of R3-2.3.3.3.3 of Chapter 3 of the VFA Rulebook.

Section 10 Systems Audit and IT Audit Requirements

FAQ-10.1 What is an Innovative Technology Arrangement?

An innovative technology arrangement ('ITA') is defined within Article 2 (2) the Innovative Technology Arrangements and Services Act, Chapter 592 of the Laws of Malta.

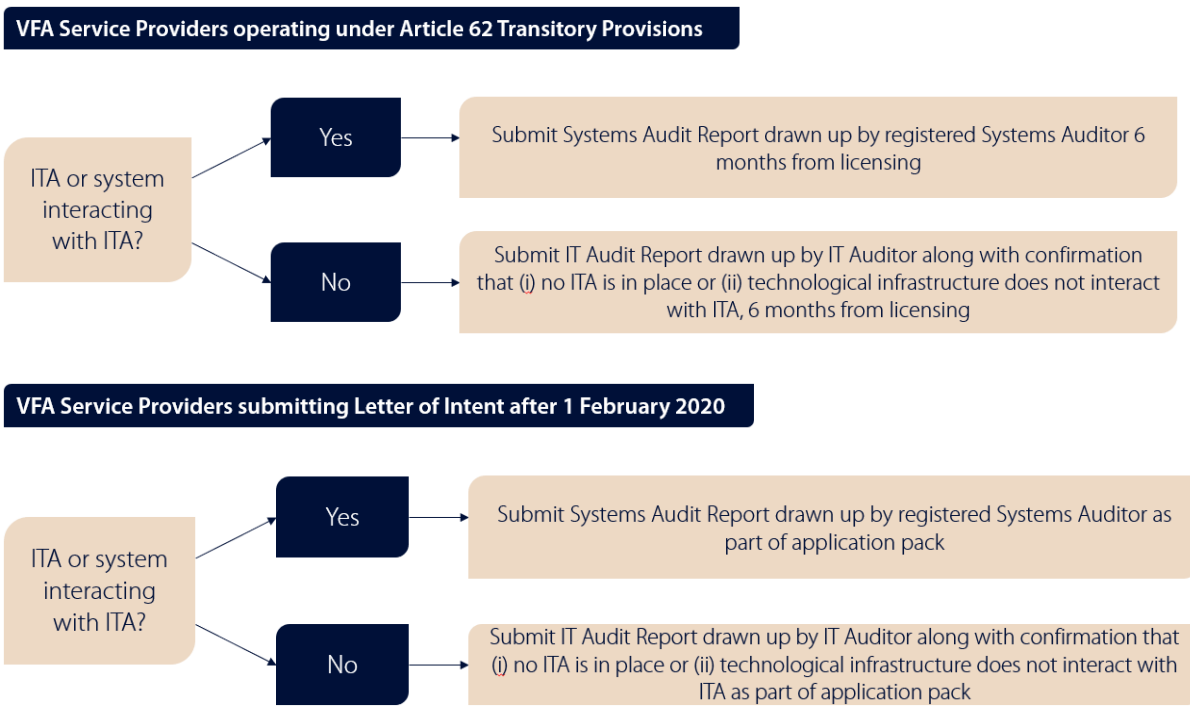
FAQ-10.2 What does an IT Audit entail?

An IT Audit should assess the operator's information technology infrastructure, policies and operations. MFSA Guidelines and nationally or internationally recognised audit standard should be followed in this regard.

The IT Audit should also be accompanied by a confirmation from the IT Auditor that the operator's technological infrastructure does not materially interact with an Innovative Technology Arrangement as defined in Article 2 (2) of the ITAS Act.

FAQ-10.3 When is the first Systems Audit Report required to be submitted?

The below graphic illustrates the timelines as to when the first Systems Audit Report is required to be submitted by Applicants for a Virtual Financial Asset Services licence.



FAQ-10.4 What information should be stored on the Live Audit Log which is required to be established in terms of R3-2.1.6.1?

The Live Audit Log should hold, at a minimum, the following information and data where applicable:

- The transaction records required by the FIAU's Part II of the Implementing Procedures, namely:
    i. the customer's identification details;
    ii. the name of any other party to the transaction;
    iii. details as to the bank account/wallet address used for the transfer of VFAs and/or FIAT currencies;
    iv. in the case of custodial wallets, the name of the institution holding the same;
    v. the value date and the date of the value transfer; and
    vi. the type and value of the VFA involved.

- Client records as set out in R3-3.2.2.5.2;
- Customer's accounting records set out in R3-3.5.2.2.2;
- Suitability assessments carried out on clients in terms of R3-3.4.3.6.3; and
- Information relating to failed or erroneous transactions carried out on the exchange or trading platform.

Such information should be made available on the Live Audit Log, at most, 10 minutes after the relevant transaction or event, as the case may be, takes place.

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