

# The Virtual Financial Assets Framework: Non-Fungible Tokens

**Ref:** 07-2022

**Date:** 5 December 2022

**Closing Date:** 6 January 2023

THESE PROPOSALS ARE NOT BINDING AND ARE SUBJECT TO CHANGES AND REVISIONS FOLLOWING REPRESENTATIONS RECEIVED FROM INDUSTRY PARTICIPANTS AND OTHER INTERESTED PARTIES. IT IS IMPORTANT THAT PERSONS INVOLVED IN THE CONSULTATION BEAR THESE CONSIDERATIONS IN MIND.

## 1 Background

The Malta Financial Services Authority (hereinafter 'the MFSA' or 'the Authority') has recently received various requests pertaining to the regulatory treatment of so called Non-Fungible Tokens ('NFTs') in the context of the Virtual Financial Assets ('VFA') Framework.

The MFSA is issuing this consultation document ('Consultation') in order to obtain stakeholder feedback in relation to the proposed treatment of NFTs in the context of the VFA framework.

## 2 Current Regulatory Treatment under the VFA Framework

Distributed Ledger Technology ('DLT') Assets are defined within the Virtual Financial Assets Act (Chapter 590 of the Laws of Malta) ('the Act') as "*(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*". Given that NFTs are intrinsically built on DLT and the definition of DLT Asset is open-ended, it is the Authority's opinion that such assets would qualify as DLT Assets within the meaning of the Act and should therefore be subject to a [Financial Instrument Test](#) on a case-by-case in order to determine the applicable regulatory framework.

The Authority further notes that due to the residual definition of 'Virtual Financial Asset', NFTs failing to qualify as either (a) a virtual token, (b) a financial instrument or (c) electronic money, would qualify as VFAs and entities engaging in activities relating to these assets would be subject to authorisation in terms of the VFA framework.

**Q1 Do you agree with the above analysis? If not, kindly explain your rationale.**

## 3 Proposed Regulatory Treatment

The Authority notes that the typical features borne by NFTs, namely their uniqueness and lack of interchangeability, limit the extent to which such assets may be used for investment or payment purposes. Furthermore, the inclusion of such assets within the scope of the VFA framework may run counter to the spirit of the Act, which sought to regulate investment-type services offered in relation to VFAs falling outside the scope of existing traditional financial service asset categories.

The Authority further notes that the EU's upcoming [Markets in Crypto-assets Regulation](#) ('MiCA'), which is expected to enter into force in Spring 2023, will exclude crypto-assets which are unique and

not fungible with other crypto-assets from its scope, eliminating the need for any form of authorisation when engaging in issuance or provision of services in relation to NFTs.

On the basis of the above, the Authority considers that it would be prudent that certain VFAs, which display clear characteristics of uniqueness and non-fungibility, also be excluded from the VFA Framework.

**Q2** Do you agree with the exclusion of NFTs from the scope of the VFA Framework? If yes, kindly explain how such an exclusion would be achieved. If not, kindly provide your rationale.

**Q3** Do you foresee any further considerations and/or implications? If yes, kindly explain.

## 4 Conclusion

The MFSA is seeking feedback from relevant stakeholders prior to proceeding with the implementation of the amendments to the VFA Framework being proposed in the Consultation. Stakeholders are invited to submit their comments and feedback with respect to the above through an [online form](#) at the earliest and by not later than **6 January 2023**.

Further updates and developments to the VFA framework will be made public on [www.mfsa.mt/our-work/virtual-financial-assets/](http://www.mfsa.mt/our-work/virtual-financial-assets/).