

## CIRCULAR TO THE INDUSTRY ON THE TRANSITORY PROVISION UNDER ARTICLE 62 OF THE VFA ACT

### 1 Background

The Virtual Financial Assets Act (Chapter 590 of the Laws of Malta) (the 'Act') shall come into force on 1 November 2018. Persons who started performing an activity or providing a service under the Act prior to the said date, may avail themselves of the transitory period under Article 62 of the Act, subject to a notification requirement to the MFSA, through the [Notification Form](#), as outlined in the [Circular to Persons Involved in DLT Asset Activity and Services](#).

### 2 The Transitory Provisions under Article 62 of the Act explained

#### 2.1 VFA Agents

Article 62(1)(b) provides for the transitory provision in respect to VFA Agents. Article 62(1)(b) states as follows:

*"62. (1) Any person who, on the date of the coming into force of this Act –*

*(b) is providing the services of a VFA agent within the meaning found under this Act, shall, within one month from the date of coming into force of this Act, apply to the competent authority for registration in terms of article 7;"*

***"Any person who...is providing the services of a VFA agent within the meaning found under this Act"***

It provides a transitory period for any person who, on the date of the coming into force of the Act, is providing the services of a VFA Agent within the meaning of the Act. A VFA Agent is a person registered with the MFSA under the Act to exercise the functions listed under Article 7 and, or 14.

***"shall, within one month...apply to the competent authority for registration...;"***

It is clear that any person providing the services of a VFA Agent, under Article 7 and, or 14, as explained above, has a one-month period, from the date of the coming into force of the Act, in order to apply for registration with the MFSA.

## 2.2 Issuers of VFAs

Article 62(1)(a) states as follows:

*“62. (1) Any person who, on the date of the coming into force of this Act –*

*(a) is undertaking an activity in terms of article 3 shall, within three months from the date of coming into force of this Act, draw up a whitepaper and register it with the competent authority in terms of the said article:*

*Provided that this paragraph shall be applicable only to those persons who have commenced an offering or have applied for admission to trading in terms of article 3 by not earlier than two weeks prior to the coming into force of this Act;”*

### ***“Any person who...is undertaking an activity in terms of article 3”***

It provides a transitory period for any person who, on the date of the coming into force of this Act, is undertaking an activity in terms of Article 3 of the Act. Article 3 of the Act refers to the offering of a Virtual Financial Asset to the public, in or from within Malta, or applying for a Virtual Financial Asset's admission to trading on a DLT exchange. An issuer is defined under Article 2(2) 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.

### ***“shall within three months, draw up a whitepaper and register it with the competent authority...”***

It is clear that any person undertaking an activity under Article 3, as explained above, has a three-month period, from the date of the coming into force of the Act, in order to draw up a whitepaper and register it with the MFSA in terms of Article 3 of the Act.

The Authority has been receiving numerous queries on what constitutes an “offering to the public” and is of the understanding that several operators have not proceeded with the submission of, or submitted partial or erroneous, Notification Forms in view of the lack of a definition and/ or any further guidelines on behalf of the Authority.

In view of the above, the Authority wishes to inform the industry that a definition of “offer of virtual financial assets to the public” shall be included in the Glossary of Terms, including any exemptions therefrom. The updated Glossary of Terms will be made available on [www.mfsa.com.mt/vfa](http://www.mfsa.com.mt/vfa) shortly.

## 2.3 VFA Service Providers

Article 62(1)(c) provides for the transitory provision in respect to VFA Service Providers. Article 62(1)(c) states as follows:

*“62. (1) Any person who, on the date of the coming into force of this Act –*

*(c) is providing a VFA service within the meaning found under this Act shall, within twelve months from the date of coming into force of this Act, apply to the competent authority for licence in terms of article 14.;*”

***“Any person who...is providing a VFA service within the meaning found under this Act”***

It provides a transitory period for any person who, on the date of the coming into force of the Act, is providing a VFA service within the meaning found under the Act. The Act defines a VFA service as any service falling within the Second Schedule to the Act, when provided in relation to a DLT asset which has been determined to be a Virtual Financial Asset. In this respect, the MFSA has issued a Financial Instrument Test, the purpose of which is determining whether a DLT asset qualifies as [i] Electronic Money as defined under the Third Schedule to the Financial Institutions Act (Chapter 376 of the Laws of Malta); [ii] a Financial Instrument as defined under the Second Schedule to the Investment Services Act (Chapter 370 of the Laws of Malta), whether issued in Malta or otherwise; [iii] a Virtual Financial Asset; or [iv] a Virtual Token as defined under the Act. Following a public consultation, a beta version of the Financial Instrument Test and complementing Guidelines were issued on 24 July 2018. The finalised version of the Financial Instrument Test will be made available on [www.mfsa.com.mt/vfa](http://www.mfsa.com.mt/vfa) shortly.

***“shall, within twelve months... apply to the competent authority for licence ...”***

It is clear that any person undertaking a VFA Service, listed in the Second Schedule to the Act, in relation to a Virtual Financial Asset, as explained above, has a twelve-month period, from the date of the coming into force of the Act, in order to apply for a licence with the MFSA in terms of Article 14 of the Act.

The Authority has been receiving numerous queries on the level of operations required for a person to be determined as “providing a VFA service”. The MFSA wishes to clarify that if a person has commenced its operations and has the ability to on-board clients, it may avail itself of the transitory period under the Act and should proceed to submit the Notification under Article 62 of the Act.

### **3 Notification under Article 62 of the Act**

For the purposes of the notification under Article 62 of the Act, the Authority shall only be taking into consideration notifications submitted using this [Notification Form](#).

#### **3.1 Submitted Notification Forms**

The Authority is currently analysing the information included in the forms submitted as at date and notes that a significant number of submissions are only partially, or erroneously, filled in. In this regard, the Authority wishes to inform the industry that in relation to:

- **complete submissions** - it shall be notifying, through email, the pertinent operators that they may avail themselves of the transitory provision in terms of Article 62 of the Act; and
- **partially or erroneously completed forms** - it shall be notifying, through email, the pertinent operators that they are required to revise and resubmit a Notification Form. In this respect,

the deadline for these operators to resubmit a Notification Form shall be extended by a period of **seven (7) calendar days** from the date of receipt of such email.

### **3.2 *Pending Notification Form Submissions***

The Authority hereby notifies that persons wishing to avail themselves of the transitory provision in terms of Article 62 of the Act, but have not yet submitted a Notification Form, have until **12 November 2018** to submit a complete Notification Form.

### **3.3 *Successfully Completed Notification Procedure***

Once the above notification procedure is successfully completed, the relevant person may continue to undertake such activity or provide such service or services, in or from within Malta, until the whitepaper has been registered with, or the application has been determined by, the MFSA and, in so doing, is not to be regarded as carrying on such activity or providing such service in contravention of the Act. It should be emphasised that entities operating under the transitory provision shall remain unregulated until the applicable registration or licence is obtained.

Further updates and developments on the Virtual Financial Assets Framework will be made public on: [www.mfsa.com.mt/vfa](http://www.mfsa.com.mt/vfa).

**Communications Unit**  
**31 October 2018**