

Consultation Document on Circular to Virtual Financial Asset Service Providers in relation to System Audit Requirements

Ref: 16-2019

Date: 15 October 2019

Closing Date: 25 October 2019

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.

Introduction

Following discussions held with the Malta Digital Innovation Authority ('MDIA'), the Malta Financial Services Authority ('MFS') is issuing this consultation document ('Consultation') in order to obtain industry feedback in relation to proposed amendments to the Systems Audit and Live Replication Server requirements laid down in the Virtual Financial Assets Rulebook (the 'Rulebook') prior to their adoption.

Consultation Period

This Consultation is open to the public until 25 October 2019. Industry participants and interested parties are invited to submit their feedback via email to VFA@mfsa.mt.

Circular to Virtual Financial Asset Service Providers

1 Background

The MFSA is issuing this Consultation following discussion with the MDIA in order to inform prospective VFA Services Licence applicants ('Applicants') of certain proposed updates in relation to the Systems Audit and live replication server requirements laid down in Chapter 3 of the Virtual Financial Assets Rulebook (the 'Rulebook'). The updates included in this Consultation are proposed to come into effect on 1 February 2020 (the 'Effective Date').

2 Systems Audit

Reference is made to the requirement set out in Sub-section 4 of Section 1 of Title 2 of Chapter 3 of the Rulebook. The MFSA is hereby proposing that, from the Effective Date onwards, all Applicants having an Innovative Technology Arrangement ('ITA') in place as part of their operations will be required to appoint a Systems Auditor which is registered with the MDIA in terms of Article 9 of the Innovative Technology Arrangements and Services Act (Chapter 592 of the Laws of Malta) (the 'ITAS Act').

Furthermore, the Systems Auditor will be required to carry out a Systems Audit and issue an audit report in line with the MDIA's [Systems Auditor Report Guidelines](#) and [Systems Auditor Control Objectives](#) as well as the MFSA's [Guidance Notes on Cybersecurity](#), both at application stage as well as on an annual basis thereafter. Applicants shall be required to submit the said audit report (the 'Report') along with the resulting System Auditor's opinion, to both the MFSA, as well as the MDIA.

Further to the [Circular to Virtual Financial Asset Service Providers](#), issued by the MFSA on 6 September 2019, the MFSA proposes that entities:

- i. operating under the transitory provision in terms of Article 62 of the Virtual Financial Assets Act (Chapter 590 of the Laws of Malta) (the 'Act') and wishing to continue providing VFA Services following the expiry of the transitory period; or
- ii. commencing the VFA Services Licence application process prior to the Effective Date

will be required to appoint a registered Systems Auditor and submit the first Report within six (6) months from the granting of licence or commencement of business, as the case may be. It is proposed that the said requirement will be applicable only insofar as a Report is not submitted during the application process.

3 Applicants without an Innovative Technology Arrangement

Where an Applicant does not have an ITA in place, the MFSA is proposing that the requirement to appoint a Systems Auditor which is registered with the MDIA, in terms of Article 9 of ITAS Act, shall also apply. This in view of the fact that competence in the fields of both [i] ITAs and [ii] traditional IT infrastructure, and especially the interplay thereof, would be required for the purposes of carrying out an audit.

In this case, the said Systems Auditor will be required to carry out an audit on the Applicant's IT infrastructure and issue an audit report in line with the applicable provisions of the MDIA's [Systems Auditor Report Guidelines](#) and [Systems Auditor Control Objectives](#) as well as the MFSA's [Guidance Notes on Cybersecurity](#), which shall be applicable *mutatis mutandis*. The resulting Report and Auditor's opinion shall be required to be submitted both to the MFSA as well as the MDIA.

4 Live replication server

The proviso to R3-3.5.2.1.6 of Chapter 3 of the Rulebook currently states that '*where the Licence Holder's IT infrastructure is not based in Malta, or is located in a cloud environment, the Licence Holder shall ensure that data is replicated real time by virtue of a live replication server located in Malta*'. The MFSA proposes that, from the Effective Date onwards, the said live replication server requirement shall be applicable to all Applicants, irrespective of where their IT infrastructure is based. Such live replication server will be required to be in line with the MDIA's [Forensic Node Guidelines](#) and will further fall within the scope of the audits carried out by Systems Auditors.

Further to the above, it is being proposed that Applicants will also be required to appoint a person with the necessary seniority, skills, knowledge and experience to ensure that any request for information regarding legal compliance and the operational behaviour of the system can be acted upon satisfactorily. The person chosen to undertake such role may engage in other roles within the entity. Furthermore, such person shall be identified by the Applicant to the Authority by way of notification.

With reference to the [Circular to Virtual Financial Asset Service Providers](#), issued by the MFSA on 6 September 2019, the MFSA proposes that entities:

- i. operating under the transitory provision in terms of Article 62 of the Act and wishing to continue providing VFA Services following the expiry of the transitory period; or
- ii. commencing the VFA Services Licence application process prior to the Effective Date

will be required to have in place a live replication server in line with the above upon submission of the VFA Service Providers Application Form. Subsequently, the said live replication server will be required to be audited by the registered Systems Auditor and any findings thereof shall be included in the Report to be submitted to both the MFSA as well as the MDIA within the timeframe stipulated under Section 2 of this Consultation.

Going forward, and subject to the implementation of the proposal included in this section, the MFSA shall also be issuing further guidance in relation to what Applicants will be required to include within the live replication server.

5 Going forward

Upon assessing the feedback received by the industry participants and interested parties in relation to the Consultation, the MFSA will be revising the Rulebook to reflect any updates accordingly, which will come into effect on the Effective Date.

Going forward, the MFSA is further considering, on the basis of an Applicant's or VFA Services Licence Holder's:

- i. nature, scale and complexity of business,
- ii. risk profile and, or
- iii. criticality of its ITA/s in relation to its operations

to introduce the requirement for such ITA to be certified by the MDIA in terms of Article 8 of the ITAS Act. Any updates in this regard shall be communicated to the industry accordingly.

6 Conclusion

The Authority is seeking feedback from the industry before proceeding with the implementation of the updates presented in this Consultation Document. The consultation is open to the public until 25 October 2019. Industry participants and interested parties are invited to submit their comments and feedback with respect to the above by email on VFA@mfsa.mt by not later than the said date.