



Consultation Document on ITA Certification with MDIA in relation to Virtual Financial Assets Service Providers

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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.

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1. Introduction

The Malta Financial Services Authority ('MFSA'), jointly with the Malta Digital Innovation Authority ('MDIA'), is issuing this consultation document ('Consultation') to obtain industry feedback in relation to the proposed adoption of Innovative Technology Arrangement ('ITA') certification with the MDIA in relation to applicants of Virtual Financial Assets services licence and licence holders (hereinafter collectively 'VFASPs').

2. Consultation Period

This Consultation is open to the public until 30 March 2021. Industry participants and interested parties are invited to submit their feedback via email to VFA@mfsa.mt.

3. ITA Certification

Cognisant of the fact that reliance on Distributed Ledger Technology (DLT)-based systems increase certain technological risks, the MFSA, jointly with the MDIA, is proposing that ITA certification with the MDIA shall become a requirement for the licensing of VFASPs.

An ITA certification with the MDIA would provide an additional level of regulatory certainty, user-trust and oversight by relying on the MDIA as the Authority responsible for the certification of ITAs based on Systems Audits.

As such, where a VFASP has an ITA in place, as defined in the First Schedule to the Innovative Technology Arrangements and Services Act (Chapter 592 Laws of Malta) ('ITAS Act'), as part of its operations, the MFSA will require such a VFASP to obtain an ITA Certification with the MDIA in terms of Article 8 of the ITAS Act for the components of its technology deemed to qualify as an ITA.

It is recognised, however, that the setup of certain technological infrastructures being used by VFASPs may not classify as ITAs as defined in the First Schedule of the ITAS Act. In such cases, where a VFASP believes that its technological infrastructure does not have an ITA in place as part of its operations, the VFASP shall apply for a ruling by the MDIA in terms of Article 3 (4) of the ITAS Act. Such a ruling would determine whether, based on the system blueprint submitted by the VFASP, the technological infrastructure is deemed, fully or partly as being an ITA, or otherwise.

Where a VFASP can supply a MDIA ruling to the MFSA confirming that its technological infrastructure does not qualify to be an ITA, the VFASP shall be exempted from the need for MDIA certification and will only be required to undertake an IT Audit, as per R3-3.1.6.7 of Chapter 3 of the VFA Rulebook.

Conscient of the additional costs being imposed on VFASPs by this requirement, MDIA would be waiving their ITA Certification fees for year 1 and year 2.

Q 1

What are your views regarding this proposed change to the requirements for VFASPs which have an ITA in place?

Q 2

Do you agree with the proposed implementation?

4. Synergies in existing requirements

Chapter 3 of the VFA Rulebook and the MDIA certification introduce requirements to ensure efficient access to data, namely the Live Audit Log and the Forensic Node respectively.

In order to remove any ambiguity, the MFSA and MDIA wish to clarify that synergies will continue to exist between the requirements found in the VFA Rulebook and those imposed by MDIA certification. In this regard, two distinct situations have been identified as per the below:

Scenario 1 – A VFASP with a technological setup deemed to be fully or partly based on an ITA, following an MDIA ruling

In this case, the VFASP would be required to comply with the MDIA's certification requirements. These include, *inter alia*, the establishment of a Forensic Node and the appointment of a Technical Administrator registered with the MDIA. In this regard, the Authorities wish to clarify that the role of the Technical Administrator may be undertaken by a person already employed with the VFASP, provided that such person is registered with the MDIA as a Technical Administrator.

The MFSA wishes to further clarify that the Live Audit Log requirement would still be applicable in this case, however, the functionalities and data collection associated with the Live Audit Log may be undertaken on the same machine that will be used to house the Forensic Node.

In a similar manner, the role of the appointed person required by R3-2.1.6.1 of Chapter 3 of the VFA Rulebook may also be undertaken by the same individual undertaking the Technical Administrator role and registered with the MDIA for certification purposes.

Scenario 2 – A VFASP with a technological setup which does not include an ITA, following an MDIA ruling

In such cases where a VFASP is not required to obtain MDIA certification, the current requirements relating to the establishment of a Live Audit Log, namely R3-2.1.6.1 and R3-2.1.6.2 of Chapter 3 of the VFA Rulebook, will remain unchanged.

These synergies alleviate any potential duplication and added costs that may occur with the introduction of the MDIA certification requirement for VFASPs without compromising on the requirements of the MFSA and the MDIA.

Q 3

Do you have any comments regarding the synergies and consolidation of requirements as identified above?

5. Timeline of implementation

Upon completion of this Consultation, the newly proposed MDIA Certification requirements will be transposed into Chapter 3 of the VFA Rulebook. The requirements will become immediately applicable to all applicants of VFA services licence commencing their application process after publication of the rules.¹

Cognisant of the fact that the coming into force of these rules may impact Licence Holders ('LHs'), and applicants of Virtual Financial Assets services licence which have already commenced the application process prior to the date of publication of such rules, the MFSA is proposing the following transitional period as per below:

In the case of LHs:

A LH which believes that it does not have an ITA in place as part of its operations will be required to present an MDIA ruling, in terms of Article 3 of the ITAS Act, to the MFSA within three months of coming into force of the rules. Where an MDIA ruling:

- a. deems that a LH does not have an ITA in place as part of its operations, the LH will be required to submit an IT Audit Report to the MFSA (unless it has already done so) on the date that such deliverable would fall due for the LH in question, and an on annual basis thereafter.
- b. deems that a LH has an ITA in place as part of its operations, the LH will be required to submit a Systems Audit Report to the Authorities and obtain MDIA certification within nine months of the ruling, provided that no major issues are identified in the Systems Audit Report.

A LH which knows that it has an ITA in place as part of its operations will be required to submit a Systems Audit Report to the Authorities (unless it has already done so). If the Systems Audit report does not identify any major issues, the LH will be required to obtain an MDIA Certification within three months of coming into force of the rules.

In the case of Applicants:

Applicants of a VFA services licence who have commenced the application process prior to the publication of the rules and who believe that they do not have an ITA in place as part of their

¹ The commencement of the application process is considered to be the date on which the preliminary meeting, in terms of R3-2.3.3.2.3, is held.

operations, will be required to present to the MFSA a ruling by the MDIA, within three months of licensing. Where a MDIA ruling:

- a. deems that a LH does not have an ITA in place as part of its operations, the LH will be required to submit an IT Audit Report to the MFSA (unless it has already done so) on the date that such deliverable would fall due for the LH in question, and an on annual basis thereafter.
- b. deems that a LH has an ITA in place as part of its operations, the LH will be required to submit a Systems Audit Report to the Authorities and obtain MDIA certification within nine months of the ruling, provided that no major issues are identified in the Systems Audit Report.

An applicant of a VFA services licence who knows that it has an ITA in place as part of its operations will be required to submit a Systems Audit Report to the Authorities (unless it has already done so). If the Systems Audit report does not identify any major issues, the LH will be required to obtain an MDIA Certification within three months of obtaining its licence.

Q 4

Do you agree with the proposed implementation timeline?

6. Failure to achieve MDIA certification

It is being proposed that MDIA certification becomes an essential element to provide technological assurance as part of the licensing conditions of VFASPs. For these reasons, a failure to achieve an MDIA certification would prevent an applicant for a VFASP licence from finalising its licensing process. In this case, the MFSA will rely on the MDIA to provide unsuccessful candidates with a remediation plan. Repeated failure to implement this remediation plan will form the basis for an application shelving. In case where a VFASP is already a LH, this may result in a VFASP being asked to cease all operations in relation to VFA.

Q 5

Do you agree with the proposed implementation?

7. Conclusion

The MFSA and MDIA are seeking feedback from the industry before proceeding with the implementation of the proposals presented in this Consultation. The Consultation is open to the public until 30 March 2021. 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.