

Consultation on Changes to Chapter 3 of the Virtual Financial Assets Rulebook

Ref: 09-2023

Date: 18 September 2023

Closing Date: 29 September 2023

NOTE: The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

1.0 Introduction

The Markets in Crypto-Assets Regulation ('MiCAR') came into force in June 2023 and shall apply to crypto-asset service providers as of 30 December 2024. In order to ensure a smooth transition for Virtual Financial Assets ('VFA') Service Providers, the Authority is taking steps to align the VFA Framework to the MiCAR prior to its date of application, by issuing a draft updated Chapter 3 applicable to VFA Service Providers for consultation.

A summary of the proposed amendments, which have been reflected in the draft version of the Rulebook attached to this communication, may be found below.

2.0 Changes to Title of Chapter 3

2.1 Systems & IT Audit Requirements

The Systems Audit requirement has been removed. Requirements relating to the letter of engagement and the role and responsibilities of the auditor have been reflected in the IT Audit requirement section.

2.2 Initial Capital Requirement

The Initial Capital Requirement for Class 3 and Class 4 Licence Holders ('LHs') has been reduced, in line with the MiCAR.

2.3 Other Matters Requiring Notification

Reference to professional indemnity insurance has been removed.

3.0 Changes to Title III of Chapter 3

3.1 Insurance Requirement

The insurance requirement formerly under Sub-Section 6 has been replaced with a new requirement within the prudential requirements section, as per the MiCAR.

3.2 Outsourcing Requirement

The outsourcing requirements have been amended to directly reflect MiCAR requirements.

3.3 Orderly Wind-Down Plan

The requirement to draw up an orderly wind-down plan has been introduced.

3.4 Supplementary Conditions

The service-specific requirements contained in Articles 75 to 81 of the MiCAR have been incorporated. These include requirements replacing the rules currently applicable to VFA Exchanges. Furthermore, rules pertaining to order execution and client suitability have been replaced accordingly.

3.5 Prudential Requirements

This section now reflects the reduced initial requirement and includes the possibility for the prudential requirement to be fulfilled through an insurance policy, in line with the MiCAR.

3.6 Conduct of Business

Certain disclosures required by the MiCAR have been included in Sub-Section 2. Furthermore, requirements pertaining to client categorisation have been removed.

3.7 Reporting Requirements

The Risk Management and the Internal Capital Adequacy Assessment Report ('RMICAAP') requirement has been removed.

4.0 Way Forward

It is intended that the new rulebook will become applicable on the date of its publication. Nevertheless, an additional 3-month transitional period will apply to the new requirements introduced pertaining to (i) the orderly wind-down plan; (ii) service-specific requirements (supplementary conditions) and (iii) whitepaper disclosure requirements, in view that VFA Service Providers may require additional time to become compliant with these requirements.

Stakeholders are invited to consult the draft version of the Rulebook and provide their feedback to the below consultation questions:

- 1 Do you agree with the proposed changes?**
- 2 Do you see other areas of alignment?**
- 3 Do you agree with the proposed transitional measures?**

Stakeholders are invited to express their feedback or submit any queries in relation to the above to vfa@mfsa.mt by no later than **Friday 29 September 2023**.