

User Guidelines – Virtual Financial Assets (Amendment) Regulations, 2024

The title of these amending regulations is the *Virtual Financial Assets (Amendment) Regulations, 2024* (hereinafter referred to as the “Amending Regulations”), which shall be read and construed as one with the Virtual Financial Assets Regulations (hereinafter referred to as the “Principal Regulations”).

These amendments are primarily motivated by the need for Malta to prepare for the implementation of ‘Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937’ (hereinafter referred to as “MiCA”), which is a European Regulation directly applicable in all Member States and which is set to replace the local Virtual Financial Assets (“VFA”) framework as of June 2024 and December 2024, as applicable.

In this regard, it is pertinent to note that our local VFA framework is a standalone homegrown regulatory framework which regulates the field of Initial VFA Offerings and the provision of services in relation to VFAs. When the legislator first enacted the said framework in 2018, due consideration was given to the prevailing market conditions as well as the International Regulatory environment existing at the time, and the need was felt to introduce the role of the VFA Agent.

In a nutshell, the VFA agent was intended to act as a gatekeeper, having the role of preventing persons who are not fit and proper, and are otherwise not appropriately resourced, from entering the financial system. This effectively meant that any prospective person seeking to apply for a licence to provide a VFA service, and any issuer seeking to offer a VFA or otherwise seeking to apply for a VFA’s admission to trading on a DLT exchange, was required to do so through a VFA agent who in turn conducted its own fitness and properness assessment and subsequently initiated communication with the Malta Financial Services Authority (the “MFSA” or the “Authority”).

Notwithstanding the foregoing, the role of the VFA agent became somewhat questionable with the introduction of MiCA. This is in view of the fact that MiCA does not make reference to the role of the VFA agent. Furthermore, this role is not contemplated in other jurisdictions, meaning that it may result in a barrier to any future VFA Service Providers or Issuers seeking to entry the Maltese market.¹

¹ Due consideration was also given to the fact that the role of the VFA agent did not result in an increase in efficiency when it came to the actual processing of applications.

In light of the above considerations, it was decided that the role of the VFA agent should be removed from the local VFA framework² so as to align the said framework with the upcoming MiCA regime. In fact, this role has already been removed from the Principal Act, this being the VFA Act (Cap. 590 of the Laws of Malta), by means of **Act No. XIV of 2024**.

Following such removal, the Authority is now issuing amendments to the Principal Regulations in order to ensure consistency across the board. In fact, the Amending Regulations seek to remove reference to the payment of the annual supervisory fee by VFA agents. The removal of the said annual supervisory fee, coupled with the removal of the VFA agent role, effectively means that VFA agents, who would have already paid the respective fee for the upcoming year, will not be able to continue carrying out the activities for which they are registered.

To ensure that the VFA agents' rights are adequately safeguarded, the Amending Regulations introduce a new transitory provision, which provides for a *pro rata* refund of the annual supervisory fee to each VFA agent who would still be registered with the Authority on the date of coming into force of the Amending Regulations.

These User Guidelines should be read in conjunction with, and as supplementary guidance to, the Regulations and should not be deemed to substitute a thorough reading thereof.

In case of any queries in relation to the Regulations, the MFSA may be contacted on +356 21441155.

² Such removal effectively means that any obligation, which used to fall under the remit of the VFA agent, will be legally shifted onto the prospective applicants themselves.