**No. 708**

**MINISTRY FOR FINANCE**

**Virtual Financial Assets (Amendment) Regulations, 2024**

*Explanatory Note*

**1. Introduction**

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'). The Virtual Financial Assets (hereinafter referred to as the '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.

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'). In a nutshell, MiCA is the end-result of a series of discussions within the European Union aimed at introducing a harmonised framework for the issuance of crypto-assets and services provided by crypto-asset service providers. In fact, MiCA is a full harmonisation regulation directly applicable in all Member States and which is set to replace the local VFA framework as of June 2024 and December 2024, as applicable.

These Amending Regulations are made by the Minister for Finance, acting on the advice of the Malta Financial Services Authority (hereinafter referred to as the 'MFSA' or the 'Authority'), which is the competent authority for the purposes of the Virtual Financial Assets Act (hereinafter referred to as the 'Act').

**2. Summary and background**

The approach adopted by the legislator in 2018 when enacting the Virtual Financial Assets Framework was influenced by the prevailing market conditions at the time, where the Crypto-Asset sector was at its early stages of development with an overall limited expertise both from the industry itself as well as the professionals supporting their work.

In this respect, the legislator introduced the role of the 'VFA agent', i.e. a person registered with the MFSA under the Act and authorised (either in Malta or in another recognised jurisdiction) to carry on the profession of:

i. Advocate, accountant or auditor; or

ii. A firm of advocates, accountants or auditors, or corporate service providers; or

iii. A legal organisation which is wholly owned and controlled by persons listed in points (i) and (ii) above; or

iv. Any other class of persons holding authorisations, qualifications and, or experience deemed by the MFSA as possessing suitable expertise to exercise the functions listed under the relevant articles of the Act.

Such VFA agent was required to be appointed by: (i) prospective persons seeking to apply for a licence to provide a VFA service (hereinafter referred to as "VFA Service Providers") and (ii) issuers seeking to offer a VFA or otherwise seeking to apply for a VFA's admission to trading on a DLT exchange (hereinafter referred to as "Issuers"). Hence, the VFA agent was deemed to be the first port of call for entrants to the VFA sector, as it inter alia used to conduct the fitness and properness assessment of prospective applicants seeking to obtain a VFA authorisation, and subsequently used to initiate communication with the Authority.

Notwithstanding the foregoing, the role of the VFA agent became somewhat questionable with the publication of MiCA. This is in view of the fact that MiCA does not make reference to the role of the VFA agent. Thus, it wouldn't have been tenable if Malta had to retain such role within its local framework. Furthermore, the role of the VFA agent is not contemplated in other jurisdictions, meaning that it will create an additional hurdle to any future VFA Service Providers or Issuers seeking to apply for authorisation in Malta.

In light of the above considerations[1] it was decided that the role of the VFA agent should be removed from the local VFA framework so as to align the said framework with the upcoming MiCA regime. Such removal effectively means that any obligation, which currently falls under the remit of the VFA agent, will be legally shifted onto the prospective applicants themselves.

**3. Overview of the Amending Regulations**

At the outset, it is pertinent to note that the role of the VFA agent was removed from the Act by means of Act No. XIV of 2024 – An Act to amend the Virtual Financial Assets Act, Cap. 590, and to provide for other matters ancillary or consequential thereto - which was published on the 16th April 2024.

Following such removal from the Act, the Authority is now seeking to make the necessary 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 pertaining to VFA agents. The removal of the said annual supervisory fee, coupled with the removal of the role of the VFA agent, 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.

In light of the above development, and to ensure that the VFA agents' rights are adequately safeguarded, the MFSA is proposing that a pro rata refund of the annual supervisory fee is provided to each VFA agent who is registered with the Authority on the date of the coming into force of the Amending Regulations.

[1]Due consideration was also given to the fact that, notwithstanding that the VFA agent carries out its fitness and properness assessment on each applicant, and guides them throughout the whole process, this has not translated into an increase in efficiency in the processing of applications and, or of satisfactorily eliminating the non-reputable persons/entities from approaching the Authority for the respective licence. This is even more so because the Authority still used to carry out its own comprehensive fitness and properness assessments, and its respective supervisory checks in relation to each applicant and licence holder.

The below table provides a snapshot of the annual supervisory fees applicable to VFA agents:[2]

| | Supervisory Fee (€) |
|---|---|
| VFA agent appointed in terms of article 7 of the Act | 12,000 |
| VFA agent appointed in terms of article 14 of the Act | 10,000 |
| VFA agent appointed in terms of both articles 7 and 14 of the Act | 15,000 |

**4. Commentary on parts and articles**

The current regulation 7 of the Principal Regulations, which relates to the "Payment of annual supervisory fee", will be amended by means of regulation 2 of the Amending Regulations. In fact, paragraph (b) of regulation 7, as well as the corresponding proviso, will be repealed and hence, the obligation on VFA agents, to pay the respective annual supervisory fee upon the anniversary of the date of the granting of registration, will no longer be applicable.

The current regulation 9 of the Principal Regulations, which relates to "Non-refundable or prorated fees", will be amended by means of regulation 3 of the Amending Regulations. As a general rule, fees established and due in terms of the Principal Regulations are neither refundable nor prorated. This amendment, however, seeks to provide an exception with respect to regulation 27, which is being introduced by means of these Amending Regulations, in that the annual supervisory fee paid by VFA agents shall be refunded on a pro-rata basis.

Finally, these Amending Regulations also provide for the introduction of a new transitory provision. In fact, regulation 27, which is being introduced by means of regulation 4 of these Amending Regulations, entails that VFA agents who, on the date of the coming into force of these Amending Regulations, are registered with the Authority to exercise the functions listed under article 7 and, or 14 of the Act as applicable prior to the 16th April 2024, be entitled to a pro rata refund of the respective annual supervisory fee.

**5. Concluding Section**

The Amending Regulations shall be deemed to have entered into force on the 16th April, 2024, which is the date of entry into force of Act No. XIV of 2024.

Should more information be required on these Regulations, the Malta Financial Services Authority is to be contacted on +356 21441155.

**N.B: These Explanatory Notes are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. These Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the legislation.**

14th June, 2024

[2]The supervisory fee applicable to each VFA agent varies depending on the activities for which the said VFA agent is registered with the Authority.