No. 1513

MINISTRY FOR FINANCE

Explanatory Note

Markets in Crypto-Assets Act (Fees) Regulations, 2024

1. Introduction

The Title of these regulations is the Markets in Crypto-Assets Act (Fees) Regulations, 2024 (the 'regulations'). They are to be issued under the Markets in Crypto-Assets Act (the 'Act').

The regulations form part of the exercise being carried out locally to implement 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 (the 'MiCA Regulation'). In a nutshell, the MiCA Regulation is the end-result of a series of discussions within the European Union aimed at introducing a harmonised regulatory framework for the issuance of crypto-assets and the provision of crypto-asset services by crypto-asset service providers. In fact, the MiCA Regulation provides for a fully-harmonised set of rules which are directly applicable in all Member States. As such, it is set to replace the applicable local regulatory framework, i.e. the Virtual Financial Assets Act (Cap. 590) and any regulations and rules issued thereunder.

These regulations are made by the Minister for Finance, acting on the advice of the Malta Financial Services Authority (the 'MFSA' or the 'Authority'), which is the competent authority for the purposes of the Act.

2. Summary and background

The MiCA Regulation, as implemented in the Act, provides for notification and authorisation requirements, as applicable, to which issuers of asset-referenced tokens, e-money tokens and other crypto-assets, as well as crypto-asset service providers are subject. It also provides for the supervision of such persons by the competent authority, which would be the MFSA as mentioned above. In light of the foregoing, fees are being stipulated in the regulations which are due to the competent authority in connection with an application for authorisation or the extension thereof, a notification or a request for modification submitted thereto in terms of the MiCA Regulation and the Act; and the supervision of those persons as aforementioned where applicable.

In formulating the applicable fees, due regard was given to existing fees of a similar nature which are due to the Authority at law in relation to activities which are comparable to the issuance of crypto-assets and the provision of crypto-asset services. Moreover, the fees were formulated with the intent of ensuring proportionality. In view of the foregoing, the following factors were also considered in the formulation of the said fees: (i) the complexity of the business model; (ii) the volume of business; and (iii) the cost of the resources which the Authority would require to carry out the relevant functions under the MiCA Regulation and the Act.

3. Overview of the Regulations

The regulations stipulate the fees due to the Authority by the following persons which fall within the scope of the MiCA Regulation and the Act: (i) crypto-asset service providers; (ii) issuers of asset-references tokens; (iii) issuers of electronic money tokens; and (iv) issuers of any other crypto-assets.

These regulations provide for the due date of all such fees as mentioned above. They also specify that the fees established therein are not refundable, nor shall they be prorated unless otherwise stated in the regulations.

The regulations generally relate to the following:

Regulation 1: Citation and commencement of the regulations;
Regulation 2: Interpretation of the regulations;
Regulation 3: Payment of fees in relation to crypto-assets other than asset-referenced tokens or e-money tokens;

Regulation 4: Payment of fees in relation to e-money tokens;
Regulation 5: Payments of fees in relation to asset-referenced tokens;
Regulation 6: Payment of fees in relation to crypto-asset service providers; and
Regulation 7: Fees not being refundable or prorated.

4. Commentary

The below table provides a snapshot of the fees stipulated in the regulations and the person required to pay each of the said fees.

	Application and Notification Fees	**Fee €**
Issuers of crypto-asset other than asset-referenced tokens ("ARTs") or e-money tokens ("EMTs")	Notification of white paper in terms of Article 8(1) of the MiCA Regulation and article 6(2) of the Act	2,500
Issuers of EMTs	Notification of white paper in terms of Articles 48(7) or 51(11) of the MiCA Regulation and article 23(3) or (5) of the Act	3,000
Issuers of ARTs – credit institutions	Submission of white paper for approval in terms of Article 17(1)(a) of the MiCA Regulation and article 10(2)(a) of the Act	3,000
Other issuers of ARTs	Application for authorisation in terms of Article 18(1) of the MiCA Regulation and article 11(2) of the Act	8,000
	Application for additional authorisation in terms of Article 18 of the MiCA Regulation and article 11 of the Act	3,000
Issuers of ARTs, EMTs and other crypto-assets	Notification of modification of whitepaper in terms of Article 12, Article 51(12) or 25(2) of the MiCA Regulation, as applicable	1,000
Applicant crypto-asset service providers (Class 1 crypto-asset services)	Application for authorisation in terms of Article 62(1) of the MiCA Regulation and article 28(2) of the Act	10,000
VFA Service Providers (Class 1 crypto-asset services)	Simplified application in terms of MiCA Article 143(6)	5,000
Applicant crypto-asset service providers (Class 2 crypto-asset services)	Application for authorisation in terms of Article 62(1) of the MiCA Regulation and article 28(2) of the Act	20,000
VFA Service Providers (Class 2 crypto-asset services)	Simplified application in terms of MiCA Article 143(6)	10,000
Applicant crypto-asset service providers (Class 3 crypto-asset services)	Application for authorisation in terms of Article 62(1) of the MiCA Regulation and article 28(2) of the Act	25,000

VFA Service Providers (Class 3 crypto-asset services)	Simplified application in terms of MiCA Article 143(6)	12,500
Crypto-Asset Service Providers	Modification of authorisation granted in terms of Article 62(1) of the MiCA Regulation and article 28(2) of the Act to restrict authorisation	1,000
	Supervisory Fees	**Fee €**
Issuers of ARTs other than credit institutions	Authorised in terms of Article 18(1) of the MiCA Regulation and article 11(2) of the Act	First annual supervisory fee: €8,000 prorated according to the period remaining between the date when an issuer of asset-referenced tokens is authorised and the end of the calendar year in which such authorisation was granted and €8,000 prorated according to the period between the start of the following calendar year and the date when the next supervisory fee is due
Issuers of ARTs other than credit institutions	Authorised in terms of Article 18(1) of the MiCA Regulation and article 11(2) of the Act	0.01% of the average outstanding ARTs Min Fee: 2,000 Max Fee: 250,000
Crypto-Asset Service Providers	Authorised in terms of Article 62(1) of the MiCA Regulation and article 28(2) of the Act	First annual supervisory fee: the fees established in paragraphs (a) and (b) of regulation 6(5), as applicable, prorated according to the period remaining between the date when a legal person or undertaking is granted authorisation and the end of the calendar year in which such authorisation was granted and the fees established in paragraphs (a) and (b) of regulation 6(5), as applicable, prorated according to the period between the start of the following calendar year and the date when the next supervisory fee is due.
Crypto-Asset Service Providers (Class 1 crypto-asset services)	Authorised in terms of Article 62(1) of the MiCA Regulation and article 28(2) of the Act	10,000 + 2,000 per authorised crypto-asset service + 0.05% transaction volume Max Fee: 250,000
Crypto-Asset Service Providers (Class 2 crypto-asset services)	Authorised in terms of Article 62(1) of the MiCA Regulation and article 28(2) of the Act	25,000 + 2,000 per authorised crypto-asset service + 0.05% transaction volume Max Fee: 250,000

Crypto-Asset Service Providers (Class 3 crypto-asset services)	Authorised in terms of Article 62(1) of the MiCA Regulation and article 28(2) of the Act	50,000 + 2,000 per authorised crypto-asset service + 0.05% transaction volume Max Fee: 250,000

5. Concluding Section

The Regulations shall be deemed to have come into force on the date of their publication.

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.

5th November, 2024

No. 1514

MINISTRY FOR FINANCE

Explanatory Note[1]

Virtual Financial Assets (Amendment No.2) Regulations, 2024

1. Introduction

The title of these regulations is the Virtual Financial Assets (Amendment No. 2) Regulations, 2024, (the 'amending regulations'), and they amend the Virtual Financial Assets Regulations (the 'principal regulations') which were made under the Virtual Financial Assets Act (the 'Act').

The Amending Regulations form part of the exercise being carried out locally to implement 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 (the 'MiCA Regulation'). In a nutshell, the MiCA Regulation is the end-result of a series of discussions within the European Union aimed at introducing a harmonised regulatory framework for the issuance of crypto-assets and the provision of crypto-asset services by crypto-asset service providers. In fact, the MiCA Regulation provides for a fully-harmonised set of rules which are directly applicable in all Member States. As such, it is set to replace the applicable local regulatory framework, i.e. the Virtual Financial Assets Act and any regulations and rules issued thereunder.

These amending regulations are made by the Minister for Finance, acting on the advice of the Malta Financial Services Authority, which is the competent authority under the Act.

2. Summary and background

The amending regulations amend the principal regulations so that the provisions of the latter cease to apply as the provisions of the MiCA Regulation, the Markets in Crypto Assets Act and any regulations and rules issued thereunder come

1 These Explanatory Notes are for the purpose of and in accordance with Article 3(2)(c) and Schedule III of Chapter 512 of the Laws of Malta.

into force, in accordance with the dates stipulated in the MiCA Regulation. This includes the establishment of cut-off dates as of which the fees currently applicable in accordance with the principal regulations will cease to apply.

3. Overview of the amending regulations

The Amending Regulations are being made to phase out the principal regulations in a manner which is consistent with the MiCA Regulation and the relevant dates set out therein. They generally relate to the following:

Regulation 1: Citation and commencement of the amending regulations;
Regulation 2: Amendment of regulation 9 of the principal regulations;
Regulation 3: Introduction of new regulations to the principal regulations providing for transitory provisions relating to the payment of fees and the non-applicability of regulation 4 of the principal regulations as of 30 December 2024; and
Regulation 4: The date of repeal of the principal regulations.

4. Commentary

The amending regulations specifically provide for the following:

i. The dates as of which fees relating to the registration of white papers shall cease to apply;

ii. The dates as of which the fees relating to applications for a licence to provide VFA services shall cease to apply;

iii. The dates as of which supervisory fees relating to registered crypto-asset white papers shall cease to apply;

iv. The non-applicability of the supervisory fee due by persons licenced under the Act upon cancellation of their licence in accordance with article 66(2) of the Act;

v. A pro-rata refund of any annual supervisory fee paid in accordance with the principal regulations when a licence is cancelled as mentioned in point (iv) or a white paper is deregistered in accordance with article 65(3) or (4), as applicable;

vi. The date as of which the provisions of regulation 4 of the principal regulations relating to exemptions from licensing under the Act shall cease to apply, i.e. 30 December 2024, in view of the coming into force of the relevant provisions of the MiCA on the said date; and

vii. The repeal date of the principal regulations, i.e. 3 July 2026, in view of the end date for the transitional measures provided for under the MiCA Regulation.

5. Concluding Section

The amending regulations shall be deemed to have entered into force on the 30 June 2024, which date coincides with the first date of coming into force of the MiCA Regulation and the Markets in Crypto Assets Act.

Should more information be required on these Amending 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.

5th November, 2024