

VIRTUAL FINANCIAL ASSETS RULEBOOK
CHAPTER 1
VIRTUAL FINANCIAL ASSETS RULES FOR VFA AGENTS

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CONTENTS

TITLE 1 - GENERAL SCOPE AND HIGH-LEVEL PRINCIPLES	1
SECTION 1 - SCOPE AND APPLICATION.....	1
SECTION 2 - HIGH-LEVEL PRINCIPLES.....	1
 TITLE 2 - REGISTRATION REQUIREMENTS FOR VFA AGENTS	3
SECTION 1 - GENERAL.....	3
SUB-SECTION 1 - SCOPE AND APPLICATION.....	3
SUB-SECTION 2 - REGISTRATION REQUIREMENT FOR VFA AGENTS.....	3
SECTION 2 - REGISTRATION AS A VFA AGENT	4
SUB-SECTION 1 - SCOPE AND APPLICATION.....	4
SUB-SECTION 2 - REGISTRATION CONSIDERATIONS.....	5
SUB-SECTION 3 - FITNESS AND PROPERNESS.....	5
SECTION 3 - THE REGISTRATION PROCESSES.....	7
SUB-SECTION 1 - SCOPE AND APPLICATION.....	7
SUB-SECTION 2 - GENERAL.....	7
SUB-SECTION 3 - THE REGISTRATION PROCESS FOR VFA AGENTS.....	7
SUB-SECTION 4 - POST REGISTRATION REQUIREMENTS.....	9
SUB-SECTION 5 - VOLUNTARY SUSPENSION OF VFA REGISTRATIONS.....	12
SUB-SECTION 6 - CESSATION OF THE BUSINESS OF A VFA AGENT	13
SECTION 4 - THE APPROVAL AND DEPARTURE PROCESSES FOR DESIGNATED AND APPOINTED PERSONS.....	15
SUB-SECTION 1 - SCOPE AND APPLICATION.....	15
SUB-SECTION 2 - APPROVAL AND DEPARTURE PROCESSES.....	15
SUB-SECTION 3 - THE APPROVAL PROCESS.....	15
SUB-SECTION 4 - THE DEPARTURE PROCESS.....	16
 TITLE 3 - ONGOING OBLIGATIONS FOR VFA AGENTS.....	17
SECTION 1 - SCOPE AND APPLICATION.....	17

SECTION 2 - ONGOING OBLIGATIONS FOR VFA AGENTS.....	17
SUB-SECTION 1 - GENERAL REQUIREMENTS.....	17
SUB-SECTION 2 - GOVERNANCE.....	18
SUB-SECTION 3 - INSURANCE REQUIREMENT.....	19
SUB-SECTION 4 - OUTSOURCING.....	21
SUB-SECTION 5 - PROCEDURES FOR THE REPORTING OF BREACHES.....	23
SUB-SECTION 6 - ONBOARDING OF CLIENT.....	23
SUB-SECTION 7 - THE APPOINTMENT OF MORE THAN ONE VFA AGENT.....	24
SUB-SECTION 8 - CONDUCT OF BUSINESS OBLIGATIONS.....	24
SECTION 3 - SUPPLEMENTARY CONDITIONS FOR VFA AGENTS APPOINTED IN TERMS OF ARTICLE 7 OF THE ACT	26
SECTION 4 - SUPPLEMENTARY CONDITIONS FOR VFA AGENTS APPOINTED IN TERMS OF ARTICLE 14 OF THE ACT	29
TITLE 4 - ENFORCEMENT AND SANCTIONS.....	30
SECTION 1 - SCOPE AND APPLICATION.....	30
SECTION 2 - GENERAL.....	30

REVISIONS LOG

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Title 1 General Scope and High-level Principles

Section 1 Scope and Application

- R1-1.1.1 This Chapter shall apply to VFA Agents appointed in terms of the Virtual Financial Assets Act ('the Act') and Applicants seeking Registration as VFA Agents under the Act, as applicable.
- R1-1.1.2 This Title outlines the high-level principles which should guide VFA Agents in the provision of their VFA activity in or from within Malta.
- R1-1.1.3 Title 2 of this Chapter outlines the Registration requirements and the respective Registration process for VFA Agents.
- R1-1.1.4 Title 3 of this Chapter outlines the ongoing obligations which VFA Agents must adhere to.
- R1-1.1.5 Title 4 of this Chapter provides for enforcement and sanctions in the event of misconduct by VFA Agents.

Section 2 High-level Principles

- R1-1.2.1 VFA Agents shall act in an ethical manner taking into consideration the best interests of their clients and the integrity of Malta's financial system.
- R1-1.2.2 VFA Agents shall act honestly, fairly and professionally and shall comply with, the relevant provisions of the Act, the regulations issued thereunder, and these Rules, as well as with other relevant legal and regulatory requirements, including *inter alia* the Prevention of Money Laundering Act as well as any regulations and rules issued thereunder.
- R1-1.2.3 VFA Agents shall co-operate with the MFSA in an open and honest manner and shall provide the Authority with any information it may require.
- R1-1.2.4 In complying with R1-1.2.1, VFA Agents shall:
- i. make reference to, and where applicable comply with the applicable Maltese laws, regulations and rules issued thereunder as well as any Guidance Notes which may be issued by the MFSA or other relevant body to assist the said persons in complying with their legal and regulatory obligations.

- ii. cooperate in an open and honest manner with the MFSA and any other relevant regulatory authorities; and
- iii. take due account and, where applicable, comply with any relevant EU legislation as well as any Guidance Notes/Statements/Industry Best Practices which may be issued by local and, or international standard setting bodies.

Title 2 Registration Requirements for VFA Agents

Section 1 General

Sub-Section 1 Scope and Application

R1-2.1.1.1 This Title identifies the Registration requirements for Applicants wishing to be registered as VFA Agents under Article 7 and/or Article 14 of the Act, and the applicable Registration process.

R1-2.1.1.2 This Section sets out the Registration requirement for Applicants.

Sub-Section 2 Registration Requirement for VFA Agents

R1-2.1.2.1 A person providing, or holding itself out as providing, and exercising the functions listed under Article 7 or Article 14 of the Act, whether in Malta or in another jurisdiction, without being registered with the MFSA shall be in breach of the Act.

R1-2.1.2.2 A person wishing to provide and exercise the functions listed under Article 7 or Article 14 of the Act, shall be required to register as a VFA Agent in accordance with this Title.

Provided that where a person holds any kind of authorisation whatsoever issued by the Authority, such person is expected to establish a separate entity, to be registered as a VFA Agent in accordance with this Title, in order to provide and exercise the functions listed under Article 7 and/or Article 14 of the Act.

R1-2.1.2.3 An Applicant shall propose at least three persons who shall be responsible for performing the activity of a VFA Agent under the Act ('Designated Persons'), one of whom shall also be appointed as Money Laundering Reporting Officer ('MLRO') for the VFA Agent.

The role of the MLRO is an onerous one and the VFA Agent shall ensure that it is only accepted by individuals who fully understand the extent of responsibilities attached to the role.

When appointing an MLRO, the VFA Agent shall ensure compliance with the applicable provisions of Part I of the Implementing Procedures as well as any sector-specific Implementing Procedures issued by the Financial Intelligence Analysis Unit in terms of the provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations.

R1-2.1.2.4 A person wishing to be registered to provide and exercise the functions listed under Article 7 or Article 14 shall be a legal person established either in Malta or in another recognised jurisdiction.

Provided that, where such legal person is not established in Malta, such person shall be eligible for Registration so long as: (i) it is established in a recognised jurisdiction; (ii) it has a registered business office in Malta; (iii) at least one of its Designated Persons, to be appointed in terms of R1-2.1.2.3, is resident in Malta; and (iv) it complies with all other registration requirements under this Section.

R1-2.1.2.5 A VFA Agent shall notify the Authority whether it has managed to obtain a Professional Indemnity Insurance following its efforts pursuant to R1-3.2.3.1.

R1-2.1.2.6 A VFA Agent shall be required to have an initial capital or capital contribution, as set out in Table R1-1.

TABLE R1-1: CAPITAL REQUIREMENTS FOR VFA AGENTS

Registration Type	Initial Capital Requirement in Euro		
VFA Agent registering in terms of Article 7	i.	75,000 and mandatory PII	OR
	ii.	150,000	
VFA Agent registering in terms of Article 14	i.	75,000 and PII on a best effort basis	
VFA Agent registering in terms of both Articles 7 and 14	i.	75,000 and mandatory PII	OR
	ii.	150,000	

R1-2.1.2.7 The capital requirement set out in R1-2.1.2.6 shall be fully paid up and shall consist of cash and cash equivalents in terms of International Accounting Standard 7, as may be amended from time to time.

Section 2 *Registration as a VFA Agent*

Sub-Section 1 *Scope and Application*

R1-2.2.1.1 This Section stipulates the considerations taken into account by the Authority when assessing an application for the Registration of a VFA Agent, as well as the underlying considerations of the fitness and properness assessment.

Sub-Section 2 Registration Considerations

R1-2.2.2.1 When considering whether to register an Applicant, the Authority shall *inter alia*, have regard to:

- i. the protection of investors and the general public;
- ii. the protection of the reputation of Malta taking into account Malta's international commitments;
- iii. the promotion of innovation, competition and choice; and
- iv. the reputation and suitability of the Applicant and all other parties connected with the Applicant.

R1-2.2.2.2 Pursuant to considerations outlined in R1-2.2.2.1, the Authority may register an Applicant as a VFA Agent, subject to the Applicant being a fit and proper person.

Provided that the Applicant complies with all the other application requirements determined under relevant provisions of the Act, as well as with the rules and regulations issued thereunder, as applicable, including *inter alia* the Prevention of Money Laundering Act as well as any regulations and rules issued thereunder.

R1-2.2.2.3 The onus of providing sufficient assurance to the Authority that the person is a fit and proper person to provide the services of a VFA Agent concerned rests with the Applicant.

R1-2.2.2.4 Notwithstanding Rule R1-2.2.2.3, the Authority shall, as part of the assessment process, avail itself of any additional information which may be available to it. Such information may include information which was not provided by the Applicant.

Sub-Section 3 Fitness and Properness

R1-2.2.3.1 *General*

R1-2.2.3.1.1 Applicants seeking Registration as VFA Agents shall be required to be fit and proper on a continuous basis.

R1-2.2.3.1.2 Pursuant to R1-2.2.3.1.1, in assessing whether a person is a fit and proper person, the Authority shall require that all the following three criteria are satisfied:

- i. Integrity, as further specified in R1-2.2.3.2;
- ii. Competence, as further specified in R1-2.2.3.3; and

iii. Solvency, as further specified in R1-2.2.3.4.

R1-2.2.3.1.3 The fitness and properness assessment shall be applicable to: (i) the Beneficial Owners and Qualifying Holders; (ii) the proposed Appointed Persons and (iii) the Designated Persons.

R1-2.2.3.2 *Integrity*

R1-2.2.3.2.1 Applicants and proposed persons, as applicable, shall demonstrate and provide reasonable assurance to the satisfaction of the Authority that they are of good repute as well as of their intentions to act in an honest and trustworthy manner.

R1-2.2.3.3 *Competence*

R1-2.2.3.3.1 Applicants shall demonstrate and provide reasonable assurance to the satisfaction of the Authority, both collectively and individually, that they have an acceptable level of knowledge, professional expertise and experience and that adequate systems are in place for the provision of the services of a VFA Agent.

R1-2.2.3.3.2 For purposes of R1-2.2.3.3, competence shall be interpreted as competence in terms of (i) the traditional financial services framework, (ii) the regulatory framework developed under the Act, as well as (iii) the Prevention of Money Laundering Act and any regulations and rules issued thereunder.

R1-2.2.3.3.3 For purposes of R1-2.2.3.3, individuals proposed as Designated Persons shall be required to complete a course approved by the Authority, prior to registration. The Authority shall also schedule a mandatory interview with proposed Designated Persons, and, where it deems it necessary, conduct any further assessment. Where none of the proposed Designated Persons are, or will be, appointed as an Administrator within the structure of the Applicant or the registered VFA Agent, as applicable, any reference to 'Designated Person' under R1-2.2.3.3 shall also be construed as reference to one of Administrators of such Applicant or registered VFA Agent, as applicable.

Provided that the Authority may also, in its sole discretion, require an interview with any proposed Appointed Person as it may deem necessary.

Provided further that a proposed Designated Person or proposed Appointed Person shall be deemed competent by the Authority only where such person satisfies all the aforementioned requirements.

R1-2.2.3.3.4 Further to R1-2.2.3.3.3, following approval, Designated Persons shall be required to obtain a number of CPE hours on an annual basis, as determined by the MFSA.

R1-2.2.3.4	<i>Solvency</i>
R1-2.2.3.4.1	The Applicant shall demonstrate and provide reasonable assurance, to the satisfaction of the Authority, that it is financially sound.
<i>Section 3</i>	<i>The Registration Processes</i>
<i>Sub-Section 1</i>	<i>Scope and Application</i>
R1-2.3.1.1	This Section outlines the Registration process applicable to Applicants.
<i>Sub-Section 2</i>	<i>General</i>
R1-2.3.2.1	Applicants shall submit their application and registration documents, as applicable, and in accordance with this Section to the Authority through the online VFA Agent Application Form ('the Application Form'). Any documentation requested in original should be submitted to the Authority in writing.
R1-2.3.2.2	Pursuant to R1-2.3.2.1, Applicants should also refer to the Guidance Note to the VFA Agent Application Form ('the Guidance') issued by the Authority.
R1-2.3.2.3	Applicants shall submit any notifications as applicable, and in accordance with this Section to the Authority via email through VFA@mfsa.mt . Any documentation requested in original should be submitted to the Authority in writing.
R1-2.3.2.2	The Authority shall base its decision as to whether an Applicant has met the required standard, on the basis of the information provided by the Applicant, and any other information that ought to have been disclosed by the Applicant. The MFSA shall not be liable in damages for any acts or omissions on the part of the Applicant.
<i>Sub-Section 3</i>	<i>The Registration Process for VFA Agents</i>
R1-2.3.3.1	<i>General</i>
R1-2.3.3.1.1	The Registration process consists of three phases, (i) phase one being the preparatory phase, (ii) phase two being the pre-Registration phase and (iii) phase three being the post-Registration/ pre-commencement of business phase.
R1-2.3.3.2	<i>Preparatory Phase</i>

- R1-2.3.3.2.1 Applicants shall notify the Authority of their intentions, in writing, prior to the provision, or holding itself out as providing, the services of a VFA Agent in or from within Malta.
- R1-2.3.3.2.2 Pursuant to R1-2.3.3.2.1, the statement of intent shall include, a comprehensive written description of the proposed structure, and whether Registration is being sought to perform the activities of a VFA Agent as listed under Article 7 or Article 14 or both Articles 7 and 14 of the Act.
- R1-2.3.3.2.3 The Authority, in receipt of the aforementioned statement of intent may, in its sole discretion, schedule a preliminary meeting with the Applicant.
- R1-2.3.3.2.4 Where a preliminary meeting has been held, the Applicant shall, by not later than 60 days from the date of such meeting, submit an application form with any supporting documentation as specified therein as referred to in the Guidance.
- Provided that the Authority may, under exceptional circumstances, extend the aforementioned period should the Applicant provide for justifiable reasons for the said extension and specify that no material changes to the proposed application have been made since the preliminary meeting.
- R1-2.3.3.2.5 Applicants shall also pay the applicable non-refundable application fee to the Authority, in accordance with the Virtual Financial Assets Regulations, when submitting the Application Form.
- R1-2.3.3.2.6 The submission of the Application Form shall be considered complete upon the verification that the respective application fees have been submitted to the Authority.
- R1-2.3.3.2.7 The Authority shall not initiate the review of any application which:
- i. is not complete with all the required supporting documentation; or
 - ii. has pending application fees.
- R1-2.3.3.3 *Pre-Registration Phase*
- R1-2.3.3.3.1 The Authority shall, upon submission of the Application Form, initiate the review of the application and the supporting documentation.
- R1-2.3.3.3.2 The Applicant shall inform the Authority of any changes required to the Application Form as soon as possible.
- R1-2.3.3.3.3 The Authority shall, once it is satisfied with the information set out in the application and the completion of the fitness and properness assessment pursuant to Sub-Section 3 of Section 2 of this Title, issue an 'in principle

Registration', which shall be valid for a period of three months from the date of the issue thereof.

- R1-2.3.3.3.4 Pursuant to R1-2.3.3.3.3, Applicants shall, during the three months:
- i. finalise any outstanding issues raised during the application process;
 - ii. finalise any pre-Registration conditions as determined by the Authority in the in-principle Registration; and
 - iii. submit the original copies of the final application form together with all supporting documentation.

R1-2.3.3.3.5 The Authority shall only register an Applicant as a VFA Agent upon satisfaction of the requirements set out in the 'in principle Registration' issued by the Authority.

R1-2.3.3.3.6 Once a VFA Agent is registered, the Authority shall issue a Registration certificate which shall be provided to the VFA Agent.

R1-2.3.3.4 *Post-Registration and Pre-Commencement of Business*

R1-2.3.3.4.1 Registered VFA Agents may be required to satisfy, within the set timeframes, a number of post-Registration matters, as determined by the Authority, prior to the commencement of business.

R1-2.3.3.4.2 The Authority may vary or revoke any condition of a Registration as well as impose new conditions thereto.

R1-2.3.3.4.3 The Authority shall have the power to de-register a VFA Agent should he fail to satisfy the post-Registration matters within the timeframes stipulated by the Authority.

Sub-Section 4 Post Registration Requirements

R1-2.3.4.1 *Revision of a Registration*

R1-2.3.4.1.1 VFA Agents wishing to amend their Registration, shall notify the Authority of their intention to do so prior to effecting the change.

R1-2.3.4.1.2 The VFA Agent should also include within the aforementioned notification a comprehensive description of the proposed revision and, at least, the following documentation:

- i. the extracts of application form outlining the variation; and

- ii. a confirmation from the VFA Agent's Board of Administration approving the changes.

R1-2.3.4.1.3 The Authority, in receipt of the aforementioned notification, may in its sole discretion, schedule a preliminary meeting with the VFA Agent.

R1-2.3.4.1.4 Where a preliminary meeting has been held, the VFA Agent shall, by not later than 60 days of the notification under R1-2.3.4.1.1 or the date of the preliminary meeting under R1-2.3.4.1.3, as applicable, submit the revised application form with any supporting documentation as specified therein.

Provided that the Authority may, under exceptional circumstances, extend the aforementioned period should the VFA Agent provide justifiable reasons for the said extension and that no material changes to the revision have been made since the notification or the preliminary meeting, as applicable.

R1-2.3.4.1.5 VFA Agents shall also pay a nominal revision fee of EUR 1,000 when submitting the amended application form to the Authority.

Provided that should the VFA Agent wish to change his Registration to perform activities in terms of Article 7 and/or Article 14, the VFA Agent shall have to pay the full Application Fee in accordance with the Virtual Financial Assets Regulations.

R1-2.3.4.1.6 The submission of the revised application form shall be considered complete upon the verification that the revision fee, referred to in R1-2.3.4.1.5, has been submitted to the Authority.

R1-2.3.4.1.7 The Authority shall not initiate the review of applications which are not complete with all the required supporting documentation or which have pending application fees.

R1-2.3.4.1.8 The Authority shall, once it is satisfied with the information set out in the application and the completion of the fitness and properness assessment, where applicable, issue an 'in principle approval' for the issuance of the revised Registration to the VFA Agent, which shall be valid for a period of three months from the date of the issue thereof.

R1-2.3.4.1.9 The Authority shall issue a revised Registration Certificate to the VFA Agent, upon satisfaction of the requirements in this sub-section.

R1-2.3.4.2 *Change in Qualifying Holding and Beneficial Ownership of VFA Agents*

R1-2.3.4.2.1 A VFA Agent shall notify the Authority of any changes to its ownership structure immediately upon becoming aware of such changes.

R1-2.3.4.2.2 Pursuant to R1-2.3.4.2.1, any changes to a VFA Agent's ultimate beneficial owners and/or Qualifying Holders shall require prior approval from the Authority.

R1-2.3.4.2.3 Where the Authority's prior approval is required, such approval shall be subject to the satisfaction of the 'fitness and properness' assessment.

R1-2.3.4.3 *Other Ongoing Approvals and Notifications*

R1-2.3.4.3.1 The VFA Agent shall notify the MFSA in writing of:

- i. a change of address and any changes to contact details as soon as it becomes aware.
- ii. any proposed material change to its business at least one month before the change is to take effect.
- iii. any evidence of fraud or dishonesty by a member of the VFA Agent's staff immediately upon becoming aware of the matter.
- iv. a decision to make a material claim on its professional indemnity insurance or on any other insurance policy held in relation to the VFA Agent's business. The notification should be provided as soon as the decision is taken.
- v. any actual or intended legal proceedings of a material nature by or against the VFA Agent immediately after the decision has been taken or on becoming aware of the matter.
- vi. any material changes in the information supplied to the MFSA – immediately upon becoming aware of the matter.
- vii. any other material information concerning the VFA Agent, its business or its staff in Malta or abroad – immediately upon becoming aware of the matter.
- viii. any breach of the Act, Regulations, these Rules, the Prevention of Money Laundering Act, or any regulations or rules issued thereunder, as soon as the VFA Agent becomes aware of the breach.

Notwithstanding the above, the MFSA shall be notified where any other MFSA notification is required in terms of the Rules.

R1-2.3.4.3.2 The VFA Agent shall obtain the written consent of the MFSA before:

- i. making a change to the VFA Agent's registered name, business or trade name, where applicable.
- ii. implementing material changes to its business, at least one month in advance.
- iii. making any change to its capital or the rights of its unitholders.
- iv. acquiring a Qualifying Holding in another legal person.
- v. agreeing to sell or merge the whole or any part of its undertaking.
- vi. making application to a Regulator abroad to undertake any form of activity outside Malta.
- vii. the appointment of a Designated Person or Appointed Persons.
- viii. the change in the responsibilities of a Designated Person or Appointed Persons, in advance.

Notwithstanding the above, the consent of the MFSA shall be required where any other MFSA approval is required in terms of the Rules.

R1-2.3.4.4 *Fees*

R1-2.3.4.4.1 The VFA Agent shall promptly pay all amounts due to the MFSA.

R1-2.3.4.4.2 The Annual Supervisory Fee shall be payable by the VFA Agent on the day when the Registration certificate is issued, and on every anniversary thereafter.

R1-2.3.4.4.3 By way of exception to R1-2.3.4.4.1 and R1-2.3.4.4.2 above, Annual Supervisory Fees which fall due between 1 May 2020 and 18 December 2020 shall be paid to the Authority by no later than 18 December 2020.

Sub-Section 5 Voluntary Suspension of VFA Registrations

R1-2.3.5.1 VFA Agents may voluntarily request the Authority to suspend its Registration for a period of up to six months. VFA Agents are required to adhere to all applicable Rules during the period of suspension.

Provided that this Rule shall only apply if the VFA Agent does not have any Clients and will not onboard new Clients during the suspension period.

R1-2.3.5.2 VFA Agents intending to voluntarily suspend their Registration shall submit a formal request for the approval of the suspension to the MFSA as soon as possible. The request should also include a detailed justification as to why the

suspension is required, and the efforts being made by the VFA Agent to continue its business.

- R1-2.3.5.3 The Authority shall proceed with the internal process to approve the voluntary suspension of the VFA Agent's Registration upon submission of:
- i. A resolution by the governing body of the VFA Agent confirming the VFA Agent's intention to voluntarily suspend its Registration, subject to the Authority's approval and once the necessary formalities are finalised;
 - ii. A resolution by the governing body of the VFA Agent confirming that the VFA Agent: (a) does not have Clients to whom it is providing the services outlined in Articles 7 and 14 of the Act and (b) will not provide the services outlined in Article 7 and 14 of the Act during the suspension period; and
 - iii. Such other documentation, declarations or confirmations the Authority may require.
- R1-2.3.5.5 In the event of a voluntary suspension being approved by the Authority, a public notice regarding the suspension of the Registration shall be published on the MFSA's website.
- R1-2.3.5.6 Notwithstanding R1-2.3.5.1, the VFA Agent may request the Authority for an extension of the suspension period subject that adequate and satisfactory justification is provided thereto. The request should also include a detailed justification as to why the suspension is required, and the efforts being made by the VFA Agent to continue with its business.
- R1-2.3.5.7 Notwithstanding the notification submitted in accordance with R1-2.3.5.5, the VFA Agent shall have to resubmit to the Authority a certified true copy of the documentation required under R1-2.3.5.3, with respect to the extended period requested.
- R1-2.3.5.8 Subject that the extension of the voluntary suspension of Registration is approved by the Authority, a public notice regarding such suspension of the Registration will be re-published on the MFSA's website.
- Sub-Section 6 Cessation of the business of a VFA Agent*
- R1-2.3.6.1 VFA Agents intending to surrender their Registration should submit a formal request to the MFSA for the approval of the surrender as soon as possible.
- R1-2.3.6.2 The Authority shall proceed with the internal process to approve the surrender upon submission of the following documentation by the VFA Agent:

- i. a resolution by the governing body of the VFA Agent, confirming:
 - a. the VFA Agent's intention to surrender its Registration, subject to the Authority's approval and once the necessary formalities are finalised;
 - b. that the VFA Agent does not have clients to whom it is providing the services outlined in Article 7 and 14 of the Act and will not provide the services outlined in Article 7 and 14 of the Act following the surrender of the Registration;
 - c. that due notice has been given to the clients of its intention to surrender its Registration;
 - d. that no litigation is pending which arises out of any event that occurred during the period of Registration of the VFA Agent;
 - e. that there are no pending complaints against the VFA Agent;
 - f. that the VFA Agent will remove from all letterheads, and any other stationery, any reference to being registered with the Authority; and
 - g. that the VFA Agent has informed its auditor and insurer of its intention to surrender its Registration.
 - ii. a confirmation from its auditors specifying the date by when all business and obligations related to its VFA Activity have been settled; and
 - iii. such other documentation, declarations or confirmations the Authority may require.
- R1-2.3.6.3 The Authority shall not proceed with the internal process to approve the surrender of a Registration until the VFA Agent has paid all amounts due to the Authority in application and/or supervisory fees, as applicable.
- R1-2.3.6.4 The Authority may request the VFA Agent to delay the surrender of its Registration or winding-up of its business, should it at any stage of the surrender, or winding up process, determine that this is required in order to ensure investor protection and protection of market integrity.
- R1-2.3.6.5 The approval by the Authority of the request for the surrender of the Registration shall be subject to the return of the Registration certificate to the MFSA.
- R1-2.3.6.6 The Authority may, prior to the acceptance of the request for the surrender of the Registration certificate, request a VFA Agent to revise its Constitutional Document and/or change its name, as applicable to remove all references to VFA activity.

Section 4 The Approval and Departure Processes for Designated Persons and Appointed Persons

Sub-Section 1 Scope and Application

R1-2.4.1.1 This Section shall apply to Applicants or VFA Agents proposing the appointment, replacement or removal of a Designated Person or Appointed Person.

Sub-Section 2 Approval and Departure Processes

R1-2.4.2.1 There are two processes relating to Designated Persons and Appointed Persons, namely (i) the approval process and (ii) the departure process.

R1-2.4.2.2 Unless otherwise indicated, Applicants or VFA Agents and/or proposed persons shall submit any documentation to the Authority via email through VFA@mfsa.mt. Any documentation requested in original should be submitted to the Authority in writing.

R1-2.4.2.3 The MFSA shall base its decision as to whether the proposed Designated Person or Appointed Person has met the required standards, on the basis of the information provided by the VFA Agent, or Applicant, and any other information that ought to have been provided or disclosed to the Authority. The MFSA shall not be liable in damages for any acts or omissions on the part of the proposed individual.

Sub-Section 3 The Approval Process

R1-2.4.3.1 The Applicant or VFA Agent shall inform and apply for approval from the Authority, for proposed Designated Persons or Appointed Persons, prior to such persons engaging in their proposed role.

R1-2.4.3.2 The Applicant or VFA Agent shall instruct the proposed person to submit to the Authority, the online Personal Questionnaire, as applicable.

In the case of an Applicant, the Authority shall initiate the fitness and properness assessment upon submission of the complete Application form and supporting documentation as stipulated therein provided that for registered VFA Agents, the Authority shall initiate the fitness and properness assessment upon submission of the Personal Questionnaire by the proposed person.

R1-2.4.3.3 The Authority may also require further information from the proposed person. For purposes of this Rule, the MFSA may *inter alia* request any supporting

documentation from the VFA Agent or Applicant, and/or proposed persons, as it may deem necessary.

R1-2.4.3.4 The Authority shall, as part of the assessment process, use information not provided by the proposed person, *inter alia* including publicly available information. The Authority may also make reference to the overall organisational structure of the Applicant or VFA Agent.

R1-2.4.3.5 Following the completion of the 'fitness and properness' assessment on the persons concerned, the Authority shall issue its approval to the Designated Person or Appointed Person.

R1-2.4.3.6 The Authority's approval may be conditional on the proposed person fulfilling certain conditions within set timeframes. These conditions shall be indicated in the letter of approval.

Sub-Section 4 The Departure Process

R1-2.4.4.1 The VFA Agent shall notify the Authority of the resignation or removal of a Designated Person or Appointed Person by not later than the effective resignation and/or departure date.

R1-2.4.4.2 The VFA Agent shall request the relevant Designated Person or Appointed Person, as applicable, to provide the Authority with: (i) the reason for their departure; and (ii) a written confirmation that such departure was not a consequence of any regulatory implications or to provide relevant details of any such regulatory implications, as appropriate.

R1-2.4.4.4 The VFA Agent shall also provide to the Authority together with the notification, a written statement noting the reason/s for departure and the remedial measures being undertaking to satisfy the Registration conditions as applicable. The notification should be submitted to the Authority via email through VFA@mfsa.mt. Any documentation requested in original should be submitted to the Authority in writing.

Title 3 Ongoing obligations for VFA Agents

Section 1 Scope and Application

R1-3.1.1 This Title provides the ongoing obligations for VFA Agents registered under Article 7 and/or Article 14 of the Act, except for:

- i. Section 3 which shall apply solely to VFA Agents registered under Article 7; and
- ii. Section 4 which shall apply solely to VFA Agents registered under Article 14.

Section 2 Ongoing Obligations for VFA Agents

Sub-section 1 General Requirements

R1-3.2.1.1 A VFA Agent shall at all times have adequate business organisation, systems, experience and expertise to act as VFA Agent.

R1-3.2.1.2 The VFA Agent shall take reasonable steps to ensure continuity and regularity in the performance of the services of a VFA Agent. To this end, the VFA Agent shall employ systems, resources and procedures that are appropriate and proportionate to the nature, scale and complexity of the VFA Agent's business.

R1-3.2.1.3 The VFA Agent shall maintain sufficient records to be able to demonstrate compliance with its obligations.

R1-3.2.1.4 Pursuant to R1-3.2.1.3, such records shall be kept at the disposal of the MFSA, for at least five years.

Provided that the Authority may request that such records are kept for a period of up to seven years.

Provided further that the requirements set out in this Rule shall be without prejudice to:

- i. any other record keeping obligations that the VFA Agent may have in terms of any other law, rules or regulation; and
- ii. the right of any other authority, in terms of applicable law, to access the documents, data or information covered by this Section.

R1-3.2.1.5 The VFA Agent shall co-operate fully with any inspection or other enquiry, or compliance testing carried out by the MFSA, or an inspector acting on its behalf.

R1-3.2.1.6 The VFA Agent shall be required to satisfy the requirements of R1-2.1.2.3, R1-2.1.2.4 and R1-2.1.2.6 at all times.

Sub-section 2 Governance

R1-3.2.2.1 A VFA Agent's business shall be effectively directed or managed by at least two individuals in satisfaction of the 'dual control' principle. Such persons shall be of sufficiently good repute, possess sufficient knowledge and experience, commit sufficient time to perform their functions and be sufficiently experienced so as to ensure the sound and prudent management of the VFA Agent.

R1-3.2.2.2 The VFA Agent shall:

- i. establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
- ii. ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
- iii. establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the VFA Agent;
- iv. employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;
- v. establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the VFA Agent;
- vi. maintain adequate and orderly records of its business and internal organisation; and
- vii. ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging their particular function soundly, honestly and professionally.

For these purposes, the VFA Agent shall take into account the nature, scale and complexity of its business, and the nature and range of the activity being undertaken in the course of that business.

R1-3.2.2.3 Without prejudice to R1-3.2.2.2, the VFA Agent shall establish, implement and maintain:

- i. systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question;
- ii. an adequate business continuity process. The business continuity policy shall be aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions, or, where that is not possible, the timely recovery of such data and functions;
- iii. accounting policies and procedures that enable it to deliver in a timely manner to the MFSA upon request, financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules; and
- iv. Due diligence systems and controls in order to enable it to conduct fitness and properness assessments on Clients.

R1-3.2.2.4 The VFA Agent shall have sound security mechanisms in place to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining confidentiality of data at all times. For purposes of this Rule 'security' shall also include cyber security.

R1-3.2.2.5 The VFA Agent shall monitor and, at least every 6 months, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this sub-section and take appropriate measures to address any deficiencies.

Sub-section 3 Insurance Requirement

R1-3.2.3.1 The VFA Agent shall make every effort to take out and maintain full Professional Indemnity Insurance cover.

R1-3.2.3.2 Where applicable, the VFA Agent shall ensure that the Professional Indemnity Insurance, *inter alia*:

- i. covers any legal liability in consequence of any negligent act, error or omission in the conduct of the VFA Agent's business by the VFA Agent or any person employed by it or otherwise acting for it, including consultants under a contract for service with the VFA Agent;
- ii. covers legal defence costs which may arise in consequence of any negligent act, error or omission in the conduct of the VFA Agent's business by the VFA Agent or any person employed by it or otherwise acting for it, including consultants under a contract for service with the VFA Agent;

- iii. the cover applies to the whole territory of the European Union and extends to all other territories from, in or to which the VFA Agent is providing its services;
- iv. includes any dishonest, fraudulent, criminal or malicious act, error or omission of any person at any time employed by the VFA Agent, or otherwise acting for it, including consultants under a contract for service with the VFA Agent;
- v. covers libel, slander and defamation;
- vi. covers loss of and damage to documents and records belonging to the VFA Agent or which are in the care, custody or control of the VFA Agent or for which the VFA Agent is responsible; including also liability and costs and expenses incurred in replacing, restoring or reconstructing the documents or records; including also consequential loss resulting from the loss or damage to the documents or records;
- vii. covers any liability resulting from any breach of a provision of the Act, any breach of any regulations made under the Act, any breach of rules issued under the act, and any award resulting from any such breach;
- viii. claims made after expiry of the policy where the circumstances giving rise to the claim were notified to the insurers during the period of the policy; and
- ix. covers the minimum limits of indemnity given in R1-3.2.3.5

R1-3.2.3.3 For the purposes of demonstrating to the satisfaction of the MFSA that the requirements in this Section are being complied with on an ongoing basis, the VFA Agent shall, upon request by the MFSA, submit to the MFSA, a copy of the renewal cover note or such other written evidence as the MFSA may require to establish compliance with these Rules.

R1-3.2.3.4 A VFA Agent shall within two working days from the date it becomes aware of any of the circumstances specified in (i) to (vii) below, inform the MFSA in writing where:

- i. during the period of a policy, the VFA Agent has notified insurers of an incident which may give rise to a claim under the policy;
- ii. during the period of a policy, the insurer has cancelled the policy or has notified its intention of doing so;
- iii. the policy has not been renewed or has been cancelled and another policy satisfying the requirements of this Section has not been taken out from the day on which the previous policy lapsed or was cancelled;

- iv. during the period of a policy, the terms or conditions are altered in any manner so that the policy no longer satisfies the requirements of this Section;
- v. the insurer has intimated that it intends to decline to indemnify the insured in respect of a claim under the policy;
- vi. the insurer has given notice that the policy will not be renewed or will not be renewed in a form which will enable the policy to satisfy the requirements of this Section; and
- vii. during the period of a policy, the risks covered by the policy, or the conditions or terms relating thereto, are altered in any manner.

R1-3.2.3.5

The required minimum limits of indemnity are:

- i. in respect of any one claim, the higher of:
 - a. three times the Relevant Income; or
 - b. EUR 1,000,000
- ii. in aggregate, the higher of:
 - a. three times the relevant income; or
 - b. EUR 1,500,000
- iii. legal costs limited to 20% of (i) or (ii) of this Rule, whichever is applicable.

Provided that, for purposes of this rule, 'Relevant Income' shall mean all gross income received or receivable which is commission, fees or other earnings arising from the VFA Agent's business activities, whether those activities are licensed under the Act or not for the last accounting year or on the basis of the business plan agreed with the competent authority in respect of the relevant year or period. Provided that income received or receivable in the form of interest, whether in respect of bank deposits or bonds and dividends does not form part of "Relevant Income".

*Sub-section 4**Outsourcing*

R1-3.2.4.1

General

R1-3.2.4.1.1

A VFA Agent shall ensure, when relying on a third party for the performance of any operational function that it takes reasonable steps to avoid undue additional operational risk for the provision of continuous and satisfactory service to Clients and the performance of its services on a continuous and satisfactory basis.

- R1-3.2.4.1.2 When the VFA Agent outsources any function, the VFA Agent shall remain fully responsible for discharging all of their obligations under these Rules and shall adequately manage the risks relating to such outsourcing arrangements at all times.
- R1-3.2.4.1.3 The VFA Agent shall carry out an ongoing assessment of the operational risks and the concentration risk associated with all its outsourcing arrangements. The VFA Agent shall notify the MFSA of any material developments.
- R1-3.2.4.1.4 The ultimate responsibility for the proper management of the risks associated with outsourcing or the outsourced activities lies with the VFA Agent.
- R1-3.2.4.1.5 When the VFA Agent outsources any function, the VFA Agent shall ensure that the outsourcing arrangements do not result in the delegation of responsibility.
- R1-3.2.4.1.6 The outsourcing of operational functions may not be undertaken in such a way as to materially impair:
- i. the ability of the MFSA to monitor the VFA Agent's compliance with all obligations;
 - ii. the orderly conduct of the VFA Agent's business;
 - iii. the quality of the VFA Agent's internal control;
 - iv. the VFA Agent's ability to manage and monitor its business and activities;
or
 - v. the ability of other internal governance bodies, such as the Board of Administration or the audit committee, to fulfil their oversight tasks in relation to the senior management.
- R1-3.2.4.1.7 A VFA Agent shall inform the MFSA of any material outsourcing arrangements and shall make available on request all information necessary to enable the Authority to supervise the compliance of the performance of the outsourced activities with the requirements of these Rules.
- R1-3.2.4.1.8 A VFA Agent shall inform the MFSA of any material development affecting an outsourced activity and the manner by which it is proposing to rectify its position in order to fulfil its obligation to its clients.
- R1-3.2.4.1.9 The MFSA may impose specific conditions on the VFA Agent for the outsourcing of any activities.
- R1-3.2.4.2 *The Outsourcing Policy*

R1-3.2.4.2.1 A VFA Agent shall have a policy on its approach to outsourcing, including contingency plans, exit strategies as well as a general policy that covers all aspects of outsourcing, including non-material outsourcing, whether the outsourcing takes place within a corporate group or not.

R1-3.2.4.3 *The Outsourcing Contract*

R1-3.2.4.3.1 The VFA Agent shall ensure that any outsourcing arrangement is based on a formal, clear, written contract which establishes the respective rights and obligations of the VFA Agent and of the service provider.

Sub-section 5 Procedures for the Reporting of Breaches

R1-3.2.5.1 The VFA Agent shall develop and maintain appropriate procedures for employees to report breaches internally.

R1-3.2.5.2 VFA Agents shall also refer to and comply with the applicable provisions of the Protection of the Whistleblower Act.

Sub-section 6 Onboarding of Clients

R1-3.2.6.1 Prior to accepting to offer its services to any Client, a VFA Agent shall, in so far as it can determine, ensure that such person is a fit and proper person. For purposes of this Rule, the VFA agent shall ensure that the Client is of sufficient good standing and repute, has sufficient financial resources and that its board of administration has, collectively, sufficient knowledge, experience and expertise in the field of information technology, DLT and DLT assets, at all times.

R1-3.2.6.2 Where a VFA Agent considers a Client, or a prospective Client, not to be a fit and proper person, it shall immediately inform the MFSA explaining, in as much detail as possible, the reasons why it does not consider such person to be fit and proper.

R1-3.2.6.3 The VFA Agent shall, prior to onboarding a Client, inform such Client of the VFA Agent's obligations under this Section and shall obtain the Client's consent to disclose the conclusions of any fitness and properness assessment conducted in terms of R1-3.2.6.1 to the MFSA.

R1-3.2.6.4 A copy of the fitness and properness assessment conducted in terms of R1-3.2.6.1 should be held at the registered address of the VFA Agent in Malta and made available to the MFSA upon request.

R1-3.2.6.5 The VFA Agent shall notify the MFSA in writing without delay of its removal, or resignation as a VFA Agent, either confirming that its departure had no regulatory implications or providing relevant details, as appropriate. The VFA Agent shall also send a copy of such notification to its Clients.

Sub-section 7 The Appointment of more than one VFA Agent

- R1-3.2.7.1 Where a Client appoints more than one VFA Agent, the VFA Agents and the Client shall agree on the allocation of the respective functions and responsibilities allocated and inform the Authority, in writing, accordingly.
- R1-3.2.7.2 The appointment of more than one VFA Agent does not relieve any of the VFA Agents so appointed of any responsibilities and, or obligations under these Rules.
- Provided that a VFA Agent shall solely be responsible for the matters allocated to him in accordance with R1-3.2.7.1.

Sub-section 8 Conduct of Business Obligations

R1-3.2.8.1 General Conduct of Business Obligations

- R1-3.2.8.1.1 VFA Agents shall adopt appropriate and transparent reporting lines within its organisation in order to ensure that issues involving risks of non-compliance with conflicts of interest rules are given the necessary priority.
- R1-3.2.8.1.2 A VFA Agent shall establish, implement and maintain effective organisational and administrative arrangements appropriate to the size and organisation of the VFA Agent and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its Clients.
- R1-3.2.8.1.3 The circumstances which should be treated as giving rise to a conflict of interest should cover cases where there is a conflict between the interests of the VFA Agent or certain persons connected to the VFA Agent or the group of which the VFA Agent forms part, or from the performance of services and activities, and the duty the VFA Agent owes to a Client; or between the differing interests of two or more of its Clients, to whom the VFA Agent owes in each case a duty.
- R1-3.2.8.1.4 A VFA Agent shall establish, implement and maintain an effective conflicts of interest policy set out in writing and which is appropriate to the size and organisation of the VFA Agent and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its Clients.
- R1-3.2.8.1.5 A VFA Agent shall keep and regularly update a record of the situations or service carried out by or on behalf of the VFA Agent in which a conflict of interest entailing a risk of damage to the interests of one or more Clients has arisen or, in the case of an ongoing service, may arise.

- R1-3.2.8.2 *Operational Independence Rules*
- R1-3.2.8.2.1 Where applicable, a VFA Agent shall take all appropriate steps to identify and to prevent or manage conflicts of interest between themselves, including their officials, employees, or any person directly or indirectly linked to them by control and their Clients or between the interests of one Client and another, including those caused by the receipt of inducements from third parties or by a VFA Agent's own remuneration and other incentive structures.
- R1-3.2.8.2.2 Where applicable, the VFA Agent shall define, oversee and be accountable for the implementation of governance arrangements that ensure effective and prudent management of the VFA Agent including the segregation of duties within that VFA Agent and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of Clients.
- R1-3.2.8.3 *Conflict of Interests Policy*
- R1-3.2.8.3.1 The conflicts of interest policy established in accordance with these Rules shall be set out in writing and shall *inter alia* include the following:
- i. The identification of, with reference to the specific services and carried out by or on behalf of the VFA Agent, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more Clients; and
 - ii. Procedures to be followed and measures to be adopted in order to manage such conflicts and to prevent such conflicts from damaging the interests of Clients.
- R1-3.2.8.3.2 The VFA Agent shall assess and periodically review, at least annually, the conflicts of interest policy established in accordance these Rules and shall take all appropriate measures to address any deficiencies.
- R1-3.2.8.4 *Remuneration Policy Rules*
- R1-3.2.8.4.1 A VFA Agent shall define and implement remuneration policies and practices under appropriate internal procedures taking into account the interests of all the Clients. The remuneration policy should be periodically reviewed.
- R1-3.2.8.4.2 In defining its remuneration policies, a VFA Agent shall *inter alia* ensure that:
- i. Clients are treated fairly and their interests are not impaired by the remuneration practices adopted by the VFA Agent in the short, medium or long term; and

- ii. Remuneration policies and practices do not create a conflict of interest or incentive that may lead Relevant Persons to favour their own interests or the VFA Agent's interest to the potential detriment of Clients.

R1-3.2.8.4.3 A VFA Agent's remuneration policies and practices shall include and provide for the maintenance of measures enabling the VFA Agent to effectively identify where the VFA Agent fails to act in the best interests of the Client and to take remedial action.

R1-3.2.8.5 *Rules on Personal Transactions*

R1-3.2.8.5.1 A VFA agent shall establish, implement and maintain adequate arrangements which prevent any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information or to other confidential information relating to Clients or transactions with or for Clients by virtue of an activity carried out by him on behalf of the VFA Agent.

R1-3.2.8.5.2 VFA Agents shall ensure that relevant persons do not enter into a personal transaction which meets at least one of the following criteria:

- i. that the person is prohibited from entering into it in terms of the Part VI of the Act;
- ii. it involves the misuse or improper disclosure of confidential information; or
- iii. it conflicts or is likely to conflict with any obligation of the VFA Agent.

Section 3 *Supplementary Conditions for VFA Agents appointed in terms of Article 7 of the Act*

R1-3.3.1 A VFA Agent shall, on an ongoing basis, ensure that an Issuer is a fit and proper person in terms of R1-3.2.6.1.

R1-3.3.2 The VFA Agent shall ensure that the DLT assets in relation to which an application for Registration of a whitepaper is being made, in terms of Chapter 2 of this Rulebook, qualify as Virtual Financial Assets. In this respect, a VFA Agent is required to endorse an Issuer's determination as to whether a DLT asset qualifies as a Virtual Financial Asset, by notifying the MFSA that the Issuer's assessment is correct. In doing so, the VFA Agent shall list any assumptions it has made or any reservations it may have.

Provided that the MFSA shall not ordinarily make any determinations of its own with reference to a DLT asset's nature but shall rely on the determinations made by the Issuer and its VFA Agent; it should therefore be understood that in the event of disagreement between the VFA Agent and the Issuer, the matter shall

be resolved between the said parties prior to a whitepaper's submission for Registration with the MFSA.

Provided further that the MFSA shall not be accepting any applications where the Issuer's determination has not been endorsed by its VFA Agent.

- R1-3.3.3 Prior to notifying the MFSA pursuant to R1-3.3.2, the VFA Agent shall also satisfy itself that a Systems Auditor has prepared a report which covers certain aspects of the Issuer's Innovative Technology Arrangement, including *inter alia* cyber security.
- R1-3.3.4 A VFA Agent shall, to the extent it is applicable, ensure that the Issuer has provided investors with a roadmap which clearly establishes and sets out milestones for the Initial Virtual Financial Assets Offering.
- R1-3.3.5 Pursuant to R1-3.3.4, the VFA Agent shall check whether the Issuer is meeting the milestones communicated to investors and whether the Issuer is making the necessary public disclosures. In the event that these milestones are not being met, the VFA Agent shall inform the MFSA accordingly.
- R1-3.3.6 Prior to the endorsement by the members of the Issuer's board of administration of the whitepaper in terms of Chapter 2 of this Rulebook, the VFA Agent shall satisfy itself that such members:
- i. can be relied upon to prepare and publish all information within their knowledge (or which it would be reasonable for them to obtain) that investors and their professional advisers would reasonably require and reasonably expect to find for the purpose of making an informed assessment of the Virtual Financial Assets to which the whitepaper relates; and
 - ii. are aware of their responsibilities and obligations as members of the Issuer's board of administration.
- R1-3.3.7 The VFA Agent shall obtain written confirmation from the Issuer's Administrator/s that the Issuer has established procedures which provide a reasonable basis for them to make proper judgements as to the prospects and, where applicable, the financial position of the Issuer and, in each case, its Group, and be satisfied that this confirmation has been given after due and careful enquiry by the said Administrator/s.
- R1-3.3.8 The VFA Agent shall obtain written confirmation from the Issuer that any profit forecast or estimates have been made after due and careful enquiry by the Issuer. The VFA Agent shall also ensure that such information is disclosed in the whitepaper.

- R1-3.3.9 Where applicable, the VFA Agent shall further obtain written confirmation from the Issuer that the financial information published in that document has been properly extracted from the Issuer's accounting records and be satisfied that this confirmation has been given after due and careful enquiry by the Issuer.
- R1-3.3.10 *Compliance Certificate*
- R1-3.3.10.1 The VFA Agent shall be required to submit to the MFSA, on an annual basis, a Compliance Certificate in relation to the Issuer. Such Certificate shall be drawn up by the Issuer, reviewed by the VFA Agent and signed by all members of the Issuer's Board of Administration.
- R1-3.3.10.2 Prior to submitting the Compliance Certificate to the MFSA, the VFA Agent shall ensure that the following are included therein:
- i. a confirmation that all the local AML/CFT requirements have been satisfied and that the Issuer has adequate systems in place to identify suspicious transactions and to draw up suspicious transaction reports, which confirmation should be obtained from the Issuer's MLRO;
 - ii. a confirmation that the Issuer's Innovative Technology Arrangement complies with any qualitative standards set and guidelines issued by the Malta Digital Innovation Authority applicable to the particular type of arrangement (irrespective of whether the said arrangement holds a certification or a ruling of eligibility under the Innovative Technology Arrangements and Services Act), which confirmation should be obtained from the Issuer's Systems Auditor;
 - iii. a statement as to whether the Issuer is a fit and proper person, which statement shall be made by the VFA Agent itself. In this respect, the VFA Agent shall conduct a review of the assessment conducted in terms of R1-3.2.6.1; and
 - iv. a statement as to whether there have been any breaches of the Act, the Regulations or these Rules, which statement should be obtained by the VFA Agent from the Issuer's Administrators.
- R1-3.3.10.4 The VFA Agent shall, on an annual basis, together with the Compliance Certificate, submit to the MFSA, an AML/CFT Report prepared by an independent auditor engaged by the Issuer. Such report shall include:
- i. a confirmation that the AML/CFT systems and controls that the Issuer purports to have in place are indeed in place; and
 - ii. a review of the implementation of such AML/CFT systems and controls.

R1-3.3.10.5 A copy of the Compliance Certificate and the AML/CFT Report, prepared in terms of R1-3.3.10, shall be held at the VFA Agent's registered business office in Malta and made available to the MFSA and the FIAU upon request.

Section 4 *Supplementary Conditions for VFA Agents appointed in terms of Article 14 of the Act*

R1-3.4.1 Where a VFA Agent is appointed in terms of Article 14 of the Act, its role with its client shall end once the Authority grants, or refuses to grant, a licence.

R1-3.4.2 A VFA Agent may, subject to being so proposed by a Licence Holder, be appointed as Compliance Officer with the Licence Holder for which it had acted as VFA Agent at application stage.

Title 4 Enforcement and Sanctions

Section 1 *Scope and Application*

R1-4.1.1 This Title provides detail with regards to administrative penalties and sanctions. It *inter alia* provides the principles which guide the MFSA when imposing an administrative penalty and provides for aggravating and mitigating circumstances in case of misconduct by VFA Agents registered under Article 7 and/or Article 14 of the Act.

Section 2 *General*

R1-4.2.1 The VFA Agent shall at all times observe the Rules which are applicable to it, as well as all the relative requirements which emanate from the Act and regulations issued thereunder. In terms of the Act, the MFSA has various sanctioning powers which may be used against a VFA Agent which does not comply with its regulatory obligations. Such powers include the right to impose administrative penalties.

R1-4.2.2 Where a VFA Agent breaches or infringes a Rule, the MFSA may by virtue of the authority granted to it under Article 48 of the Act impose administrative penalties, without recourse to a court of law, up to a maximum of EUR 150,000.

R1-4.2.3 In determining whether to impose a penalty or other sanction, and in determining the appropriate penalty or sanction, the MFSA shall be guided by the principle of proportionality. The MFSA shall, where relevant, take into consideration the circumstances of the specific case, which may *inter alia* include:

- i. the repetition, frequency, gravity or duration of the infringement by the VFA Agent;
- ii. the degree of responsibility of the person responsible for the infringement;
- iii. the financial strength of the VFA Agent;
- iv. the profits gained or losses avoided by the VFA Agent by reason of the infringement, insofar as they can be determined;
- v. the losses for third parties caused by the infringement, insofar as they can be determined;
- vi. the level of cooperation of the VFA Agent with the Authority;
- vii. previous infringements by the VFA Agent and prior sanctions imposed by MFSA or other regulatory authorities on the same VFA Agent;

- viii. the good faith, the degree of openness and diligence of the VFA Agent in the fulfilment of his obligations under the Act, relative regulations, Rules and Registration conditions or of decisions of the competent authority in this regard;
 - ix. any evidence of wilful deceit on the part of the VFA Agent or its officers; and
 - x. any potential systemic consequences of the infringement.
- R1-4.2.4 Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the VFA Agent from its performance, unless the decision of the MFSA explicitly states the contrary.
- R1-4.2.5 These Rules stipulate various requirements for the submission of documents within set time-frames. In the instance when such time-frames are not complied with, and unless there are justifiable reasons for the delay, VFA Agent will be considered as breaching the relevant Rule/s and will be penalised accordingly.
- R1-4.2.6 Documents may be submitted in various ways. The date of receipt will be as follows:
- i. if it is sent by fax and/or email, the date of receipt recorded shall be the time stamp of the fax and/or email, respectively;
 - ii. if it is sent by post, this will be the date indicated by the MFSA stamp evidencing receipt; or
 - iii. if it is delivered by hand, on the date such delivery was made and recorded by MFSA.
- R1-4.2.7 The MFSA will use its discretion to decide what action to take in respect of VFA Agents who do not submit documents by their due date, after taking into consideration the reasons, if any, put forward by the VFA Agent for the delay.
- R1-4.2.8 Late submission gives rise to liability to an initial penalty and an additional daily penalty. If the conditions imposed by MFSA are not met, the Authority reserves the right to take any further action it may deem adequate in the circumstances.
- R1-4.2.9 A right of appeal to the Financial Services Tribunal is available to VFA Agents on whom penalties are imposed.

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