

MALTA'S LEGAL FRAMEWORK FOR VIRTUAL FINANCIAL ASSETS

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GANADO
ADVOCATES

Malta's new legislative regime

1. **Malta Digital Innovation Authority Act ("MDIA Act")**
 - Establishes the Malta Digital Innovation Authority
2. **Innovative Technology Arrangements and Services Act ("ITAS")**
 - Sets out the regime for registration of Technology Service Providers and the certification of DLT Platforms - **VOLUNTARY REGIME**
3. **Virtual Financial Assets Act ("VFAA")**
 - Sets out the regulatory regime governing ICOs and other intermediaries providing services to Virtual Currencies, such as brokers, exchanges and wallet providers - **MANDATORY**



Effective Dates

- **Effective date of the VFA should be 1st November 2018.**
- **3rd – 5th October, DELTA Summit** to be held in Malta to mark the official launch of the ‘Blockchain Island’ vision.
- www.delta-summit.com



Sources of Law and Regulation

- **VIRTUAL FINANCIAL ASSETS ACT**
ENACTED – EFFECTIVE DATE 1 NOVEMBER 2018
- **VIRTUAL FINANCIAL ASSETS REGULATIONS
TO BE ISSUED UNDER THE VIRTUAL
FINANCIAL SERVICES ACT**
CONSULTATION STAGE





Sources of Law and Regulation

- **VIRTUAL FINANCIAL ASSETS REGULATIONS TO BE ISSUED UNDER THE VIRTUAL FINANCIAL SERVICES ACT**
CONSULTATION STAGE

VFA AGENTS

- **VIRTUAL FINANCIAL ASSETS RULES FOR VFA AGENTS**
CONSULTATION STAGE
 - ***RAISING THE BAR FOR VFA AGENTS***
CONSULTATION STAGE



Sources of Law and Regulation

- **VIRTUAL FINANCIAL ASSETS REGULATIONS TO BE ISSUED UNDER THE VIRTUAL FINANCIAL SERVICES ACT**
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ISSUERS

- **VIRTUAL FINANCIAL ASSETS RULES FOR ISSUERS OF VIRTUAL FINANCIAL ASSETS**
CONSULTATION STAGE
 - ***HIGHER DEGREE OF INVESTOR PROTECTION UNDER THE VIRTUAL FINANCIAL ASSETS ACT***
CONSULTATION STAGE





Sources of Law and Regulation

- **VIRTUAL FINANCIAL ASSETS REGULATIONS TO BE ISSUED UNDER THE VIRTUAL FINANCIAL SERVICES ACT**
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VFA SERVICE PROVIDERS

- **VIRTUAL FINANCIAL ASSETS RULES FOR VFA SERVICE PROVIDERS**
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VIRTUAL FINANCIAL ASSETS ACT



Virtual Financial Assets Act

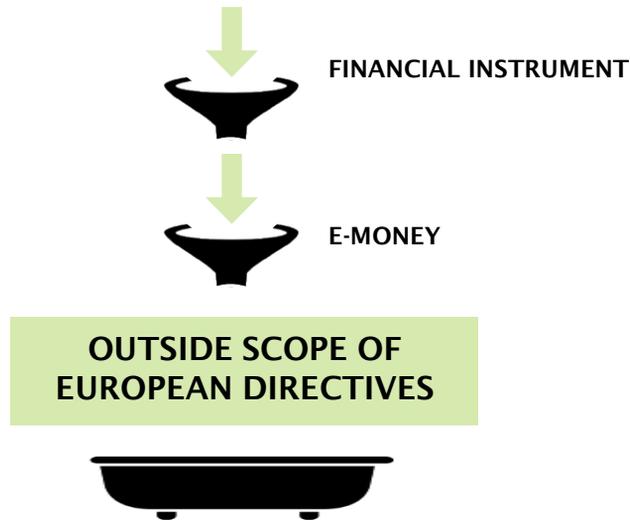
- Issuers of Virtual Financial Assets
- VFA Services Providers
- VFA Agents

Virtual Financial Assets Act



.... so what is a VFA?!

PRE-VFAA SCENARIO



Virtual Financial Assets Act

- *"virtual financial asset" or "VFA" means any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not –*

- (a) *electronic money;*
- (b) *a financial instrument; or*
- (c) *a virtual token.*

Introduction to the Virtual Financial Assets Act



Medium of exchange
for buying things

It refers to an instrument used to facilitate the trade of goods between parties. To function as a **medium of exchange**, it must represent a **standard of value** accepted by all parties.

Few VCs attained patchy acceptance as a medium of exchange. Bitcoin, is accepted by some retail outlets. On a daily basis, there are around 284,000 BTC transactions globally, compared with 330 million retail payments in the euro area.



Unit of account
for pricing

It refers to a nominal monetary unit of measure or currency used to represent the real value (or cost) of any economic item; i.e. goods, services, assets, liabilities, income, expenses

Without it buyers and sellers would have to know how many chickens an iPhone would be worth, how many iPhones would buy a house, and so forth.



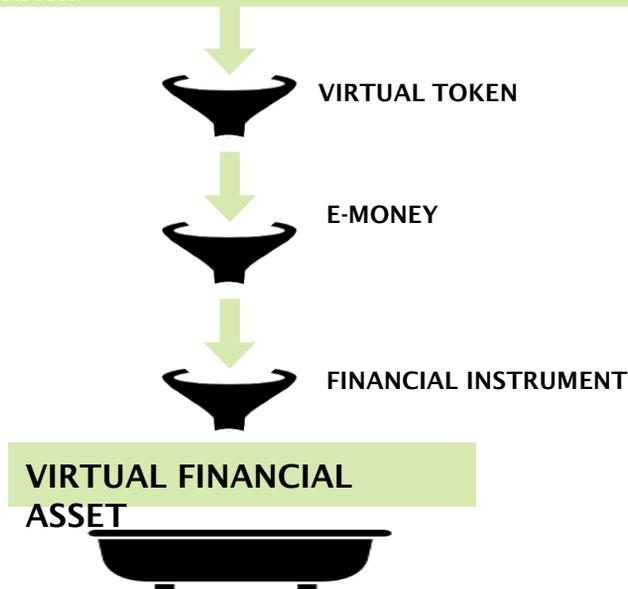
Store of value
for saving

It refers to an asset that maintains value without depreciating. Gold is a good store of value as their shelf lives is essentially perpetual, while perishable goods are poor stores of value due to their propensity to decay

Wild fluctuations in the value of VCs mean that businesses pricing in VCs could find themselves with a large and detrimental gap between their actual price and their optimal price.



Introduction to the Virtual Financial Assets Act



E-Money

- Electronic money defined by cross-reference to the EMI Directive

"electronic money" means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions ... and which is accepted by a natural or legal person other than the financial institutions that issued the electronic money;

- Stable coins and ECB Report entitled 'Virtual Currency Schemes' and published in October 2012.
- Virtual currency schemes differ from electronic money schemes insofar as the currency being used as the unit of account has no physical counterpart with legal tender status.

E-Money

- Although some of these criteria are also met by virtual currencies, there is one important difference. In electronic money schemes the link between the electronic money and the traditional money format is preserved and has a legal foundation, as the stored funds are expressed in the same unit of account (e.g. US dollars, euro, etc.). In virtual currency schemes the unit of account is changed into a virtual one (e.g. Linden Dollars, Bitcoins). This is not a minor issue ...

E-Money

- **Firstly**, these schemes rely on a specific exchange rate that may fluctuate, since the value of the virtual currency is usually based on its own demand and supply.
- **Secondly**, to some extent the conversion blurs the link to traditional currency, which might be problematic when retrieving funds, if this is even permitted.
- **Lastly**, the fact that the currency is denominated differently (i.e. not in euro, US dollar, etc.) and that the funds do not need to be redeemed at par value means that complete control of the virtual currency is left to its issuer, which is usually a non-financial company.

Virtual Token

- "**virtual token**" means a form of digital medium recordation whose utility, value or application is restricted solely to the acquisition of goods or services, either solely within the DLT platform on or in relation to which it was issued or within a limited network of DLT platforms:
- Provided that the term "DLT platform" referred to in this definition shall exclude DLT exchanges:
- Provided further that a virtual token which is or may be converted into another DLT asset type shall be treated as the DLT asset type into which it is or may be converted;



Introduction to the Virtual Financial Assets Act

Financial Instrument Test		
T1 - Virtual Token		
Financial Instrument Test Ref.:		
DLT Asset Name:		
User: <input type="text"/>		
Features of Virtual Token in terms of Article 2 of the VFA Act		
Does the DLT asset have the following feature:		
T1-1	Does the Token Standard allow the DLT asset's conversion into another DLT asset type?	NO
T1-2	Does the Token Standard support Atomic Swapping or any other type of interoperability outside (i) the DLT platform on or in relation to which it was issued or (ii) a limited network of DLT platforms?	NO
T1-3	Does the issuer intend to list or admit a DLT asset to trading on an exchange, either locally or abroad?	NO
T1-4	...a form of digital medium recordation whose utility, value or application is restricted solely to the acquisition of goods or services?	YES
 MFSA <small>MALTA FINANCIAL SERVICES AUTHORITY</small>		Determination: Virtual Token
		Proceed to: II_DECLARATIONS



Introduction to the Virtual Financial Assets Act

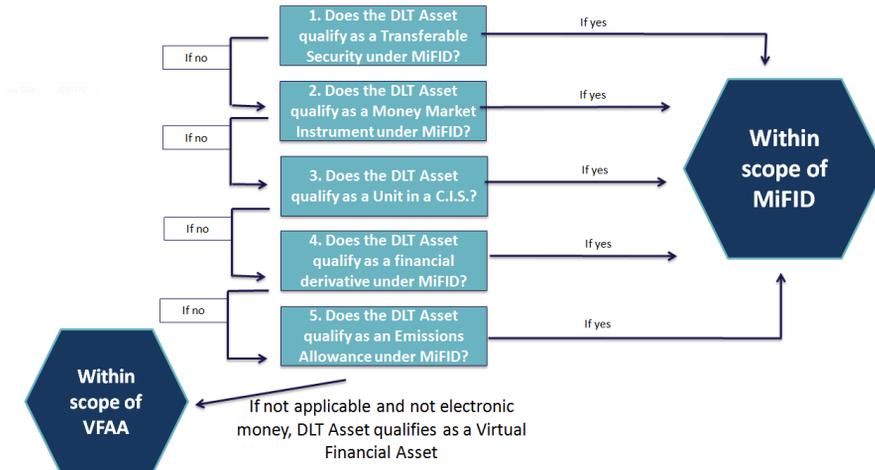
Financial Instrument Test

- The test has been issued for Consultation earlier this year and published last July.
- The VFA Act authorises the authority to issue a test to determine what constitutes a 'financial instrument'.
- Article 47 VFAA - ***Without prejudice to any other powers assigned to the competent authority in terms of this Act, the competent authority shall introduce a test applicable to issuers, VFA agents and licence holders for the purpose of determining whether a DLT asset qualifies as electronic money, a financial instrument, virtual financial asset or virtual token:***

Provided that such test shall be applicable prior to the submission of the whitepaper to the competent authority or the provision of a VFA service, as the case may be.



Financial Instrument Test



Financial Instrument Test

SECTION C

Financial instruments

- (1) Transferable securities;
- (2) Money-market instruments;
- (3) Units in collective investment undertakings;
- (4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
- (5) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;

Financial Instrument Test

SECTION C

Financial instruments

- (6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;
- (7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;
- (8) Derivative instruments for the transfer of credit risk;
- (9) Financial contracts for differences;

Financial Instrument Test

SECTION C

Financial instruments

- (10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF;
- (11) Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).

Virtual Financial Assets Act

• Issuers of Virtual Financial Assets

A disclosure regime which is specific to Virtual Financial Assets

Article 2 VFAA - "issuer" means a legal person duly formed under any law for the time being in force in Malta which issues or proposes to issue virtual financial assets in or from within Malta;

Virtual Financial Assets Act

• Issuers of Virtual Financial Assets

Article 3 VFAA - No issuer shall offer a virtual financial asset to the public in or from within Malta or shall apply for a virtual financial asset's admission to trading on a DLT exchange unless such issuer draws up a whitepaper which - (a) complies with the requirements of article 4; and (b) is registered in accordance with sub-article (2)

Provided that where a DLT asset is determined by both the issuer and its VFA agent, as appointed by the issuer in terms of article 7(1)(b) to be a financial instrument or electronic money, the issuer shall be required to comply with the respective applicable laws in lieu of the provisions of this Act.

(2) No whitepaper shall be issued or published in terms of article 9(2) unless, ten working days before the date of its circulation in any way whatsoever, a copy thereof, signed by every person named therein as a member of the issuer's board of administration or their agent authorised in writing has been delivered to the competent authority.



Virtual Financial Assets Act

• Issuers of Virtual Financial Assets

Article 3 VFAA – cont.

(3) The VFA agent appointed in terms of article 7 shall confirm to the competent authority that the whitepaper complies with this article and article 4 and shall state any assumptions it has made and any reservations it may have on any matter relating to the whitepaper for the consideration of the competent authority.

(4) Upon being satisfied that the requirements of article 4(1) have been complied with, the competent authority shall register the whitepaper.



Virtual Financial Assets Act

• Virtual Financial Assets Services Providers

Cryptoexchanges, cryptobrokers, cryptoadvisors, crypto market-makers etc.

Article 2 VFAA - "VFA service" means any service falling within the Second Schedule when provided in relation to a DLT asset which has been determined to be a virtual financial asset;



Virtual Financial Assets Act

• Virtual Financial Assets Services Providers

Cryptoexchanges, cryptobrokers, cryptoadvisors, crypto market-makers etc.

SECOND SCHEDULE OF THE VFAA

- | | |
|---|--|
| 1. Reception and Transmission of Order | 5. Custodian or Nominee Services |
| 2. Execution of orders on behalf of other persons | 6. Investment Advice |
| 3. Dealing on own account | 7. Placing of virtual financial assets |
| 4. Portfolio Management | 8. The operation of a VFA exchange |

Virtual Financial Assets Act

• Virtual Financial Assets Services Providers

Article 13 VFAA - (1) No person shall provide, or hold itself out as providing, a VFA service in or from within Malta unless such person is in possession of a valid licence granted under this Act by the competent authority:

Provided that, in so far as a determination has not already been made in terms of article 3, a person under this sub-article shall make a determination as to whether a DLT asset in relation to which it provides, or holds itself out as providing, a VFA service falls within the meaning of a virtual financial asset.

Virtual Financial Assets Act

• Virtual Financial Assets Services Providers

Article 13 VFAA – cont.

(2) The competent authority may by notice in writing to any person determine that - (a) an activity constitutes a VFA service; or (b) a DLT asset qualifies as a virtual financial asset, a virtual token, electronic money or a financial instrument, and whether or not issued in Malta; or (c) a VFA service is provided in or from within Malta; or (d) an initial VFA offering has been/is being made in or from within Malta:

Provided that the competent authority's determination shall be subject to any appeal in terms of article 51.

Virtual Financial Assets Act

• VFA Agents

Local services providers to act as a filter and as an initial processor for the MFSA.

Article 2 VFAA - "VFA agent" means a person registered with the competent authority under this Act and authorised to carry on the profession of:

(a) advocate, accountant or auditor; or

(b) a firm of advocates, accountants or auditors, or corporate services providers; or

(c) a legal organisation which is wholly owned and controlled by persons referred to in paragraphs (a) or (b)...

Virtual Financial Assets Act

• VFA Agents

Local services providers to act as a filter and as an initial processor for the MFSA.

Article 2 VFAA – Continued.

...whether in Malta or in another recognised jurisdiction, or any other class of persons holding authorisations, qualifications and, or experience deemed by the competent authority as possessing suitable expertise to exercise the functions listed under articles 7 and, or 14;

Virtual Financial Assets Act

• VFA Agents

Article 7 VFAA.(1) *An issuer is required to appoint, and have at all times in place, a VFA agent who shall be registered with the competent authority under this Act and shall:*

(a) advise and guide the issuer as to its responsibilities and obligations to ensure compliance with the provisions of this Act and of any rules or regulations issued thereunder;

(b) receive and retain all documentation and information to demonstrate how, and to what extent, the issuer has, in the VFA agent's opinion, satisfied the requirements as prescribed in the provisions of this Act and of any rules or regulations issued thereunder, in so far as they apply to any offer or admission to trading referred to in article 3, including inter alia how the issuer is considered to be a fit and proper person to carry out the activity or activities referred to in article 3, and to demonstrate how the issuer has complied and, as far as it can determine, will comply with its continuing obligations under this Act;

Virtual Financial Assets Act

• VFA Agents

(c) advise and guide the issuer as to its responsibilities and obligations to ensure compliance with the provisions of this Act and of any rules or regulations issued thereunder;

(d) advise and guide the issuer on all matters relating to the admission of the issuer's virtual financial assets to trading on a DLT exchange in terms of article 8, and their ongoing trading thereon, and submit all documentation and information in relation thereto;

(e) submit to the competent authority all required information and documentation in terms of this Act and of any regulations made or rules issued there under, including the confirmations in terms of article 4(1), in a timely manner;

Virtual Financial Assets Act

• VFA Agents

(f) disclose to the competent authority without delay any information or explanations that the competent authority may reasonably require for the purpose of verifying any information which should be taken into account in considering an application for registration of a whitepaper;

(g) not be an employee or otherwise engaged with the issuer in a manner which prohibits him from exercising independent professional judgement and for the avoidance of doubt, persons connected to the VFA agent shall not be considered as prohibited from exercising independent professional judgement only because other persons in the same organization or activity, including their partners or employees, have been simultaneously engaged to provide legal advice or financial or consultancy or accounting or administrative support services to an issuer;

Virtual Financial Assets Act

• VFA Agents

(h) act as liaison between the issuer and the competent authority on all matters arising in connection with the registration of the whitepaper or the trading of the issuer's virtual financial assets on a DLT exchange;

(l) advise the competent authority in writing without delay of its resignation, its intention to surrender its registration or if its appointment is terminated giving details of any relevant facts or circumstances thereto. A copy of such notification shall also be sent to the issuer;

Virtual Financial Assets Act

• VFA Agents

(j) review and submit to the competent authority on behalf of the administrators of an issuer on an annual basis certificate of compliance within the meaning of article 32;

(k) be considered as a subject person; and

(l) comply with any other conditions as the competent authority may require or as may be prescribed.

Virtual Financial Assets Act

• VFA Agents

7.(1) An issuer is required to appoint, and have at all times in place, a VFA agent who shall be registered with the competent authority under this Act and shall:

(j) review and submit to the competent authority on behalf of the administrators of an issuer on an annual basis certificate of compliance within the meaning of article 32;

(k) be considered as a subject person; and

(l) comply with any other conditions as the competent authority may require or as may be prescribed.

Virtual Financial Assets Act

• VFA Agents

(2) In discharging its obligations under sub-article (1), a VFA agent shall:

(a) deal with the competent authority in an open and co-operative manner;(b) deal promptly with all enquiries raised by the competent authority; and(c) disclose to the competent authority in a timely manner any material information relating to itself or the issuer of which it has knowledge which addresses non-compliance with any of the provisions of this Act or of any regulations made or rules issued thereunder.

(3) The competent authority shall establish a public register of all registered VFA agents, which shall be publicly available for consultation, shall be accessible online and shall be updated on a regular basis



Virtual Financial Assets Act

• VFA Agents

Article 8 VFAA(1) A person may apply for admission of its virtual financial assets to trading on a VFA exchange in accordance with the provisions of any regulations made or rules issued under this Act:

Provided that an application in terms of this sub-article shall be made only through a VFA agent



Virtual Financial Assets Act

• VFA Agents

Article 14. (1) An application for a licence under this Act shall be made solely through a VFA agent which is duly registered in terms of this Act in the form and manner required by the competent authority and shall furthermore –

(a) contain or be accompanied by such information and documentation, in addition to those required by this article, as the competent authority may require or as may be prescribed;

(b) be verified in the manner and to the extent required by the competent authority, or as may be prescribed;





Virtual Financial Assets Act

• VFA Agents

(c) contain the address in Malta for service on the applicant of any notice or other document required or authorised to be served on it by or under this Act;

(d) be accompanied by a programme of operations setting out the systems, security access protocols and any other matters as may be required to be set out by the competent authority from time to time; and

(e) be accompanied by such fee as may be prescribed in respect of the licence applied for, which fee shall not be refundable. (2) An application for a licence under this Act may only be withdrawn by written notice to the competent authority at a time before it has been granted or refused.



Virtual Financial Assets Act

• VFA Agents

(3) The VFA agent shall be required, diligently and with utmost good faith, to submit full and correct information whenever it is required to do so, to support the competent authority in carrying out its reviews to establish that the applicant is a fit and proper person to provide the VFA services concerned and will comply with and observe the requirements of this Act and any regulations made and rules issued thereunder and which are applicable to it:

Provided that article 7 shall apply to VFA agents appointed in terms of this article mutatis mutandis.



Virtual Financial Assets Act

• VFA Agents

TRANSITORY PROVISIONS

Article 62 VFAA.(1) Any person who, on the date of the coming into force of this Act

(b) is providing the services of a VFA agent within the meaning found under this Act, shall, within one month from the date of coming into force of this Act, apply to the competent authority for registration in terms of article 7

Virtual Financial Assets Act

- No person shall provide, or hold itself out as providing, a VFA service in or from within Malta unless such person is in possession of a valid licence granted under this Act by the competent authority.
- Any person who on the date of the coming into force of the Act is providing a VFA services within the meaning of the Act, shall **within twelve months** from the date of coming into force of this Act, apply to the competent authority for licence in terms.
- A person may continue to provide VFA services in or from within Malta until the application has been determined by, the competent authority and, in so doing, is not to be regarded as carrying on such activity in contravention of the Act.

Initial Virtual Financial Asset Offering

- **TRANSITORY PROVISIONS – Article 62 VFAA - *Any person who is offering virtual financial assets to the public in or from within Malta shall, within three months from the date of coming into force of this Act, draw up a whitepaper and register it with the competent authority.***

Provided that this paragraph shall be applicable only to those persons who have commenced an offering or have applied for admission to trading in terms of article 3 by not earlier than two weeks prior to the coming into force of this Act.

Thank you

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