

C 778

**A BILL
entitled**

AN ACT to regulate the field of Initial Virtual Financial Asset Offerings and Virtual Financial Assets and to make provision for matters ancillary or incidental thereto or connected therewith.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

ARRANGEMENT OF THE ACT

| | | Articles |
|-----------------|--|----------|
| Part I | Preliminary | 1 - 2 |
| Part II | Initial VFA Offerings | 3 - 12 |
| Part III | Licensing Requirements | 13 |
| Part IV | Application, Grant, Cancellation, etc., of Licences | 14 - 22 |
| Part V | Board of Administration and Obligations of Licence Holders | 23 - 32 |
| Part VI | Prevention of Market Abuse | 33 - 37 |
| Part VII | Regulatory and Investigatory Powers | 38 - 49 |
| Part VIII | Duty of Auditors | 50 |
| Part IX | Appeals, Remedies, Sanctions and Confidentiality | 51 - 57 |
| Part X | Miscellaneous Provisions | 58 - 61 |
| Part XI | Transitory Provisions | 62 |
| First Schedule | Matters to be specified in a Whitepaper of an issuer and requirements for its approval and publication | |
| Second Schedule | VFA services | |

PART I

Part I

Preliminary

1. (1) The short title of this Act is the Virtual Financial Assets Act, 2018. Short title and commencement.

(2) This Act shall come into force on such date as the Minister for Digital Economy may by notice in the Gazette establish, and different dates may be so established for different provisions and different purposes of the Act.

2. (1) Unless the context otherwise requires, terms and phrases not defined in this Act shall have the same meaning as the said terms and phrases are given in the Malta Digital Innovation Authority Act, 2018. Interpretation.
Bill No 45.

(2) In this Act and in the Schedules thereto, unless the context otherwise requires -

"**administrator**" means an officer or any person who is appointed to carry out representative and fiduciary functions in the control and administration of a legal person, and any person who carries out such functions even if under another name, but shall not include a technical administrator or a resident agent under the Innovative Technology Arrangements and Services Act, 2018 or a VFA agent, and the term "board of administration" shall be construed accordingly; Bill No 43.

"advertisement" means any form or medium of marketing activity disseminated to the public by means of any type of media, which promotes the purchase of a virtual financial asset or the procurement of a VFA service:

Provided that an advertisement shall not include the provision of a personal recommendation;

"assets" means movable and immovable property of any kind;

"benchmark" means any rate, index or figure, made available to the public or published that is periodically or regularly determined by the application of a formula to, or on the basis of, the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates or other values, or surveys, and by reference to which the amount payable under a virtual financial asset or the value of a virtual financial asset is determined;

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C 782

(a) in accordance with the Treaty on the Functioning of the European Union as applied in that Member State or EEA State; and

(b) subject to any regulations made under this Act, or Rules issued by the competent authority pursuant to this Act;

"European Supervisory Authorities" or "ESAs" means EBA, ESMA and EIOPA;

Cap. 370. "financial instrument" shall have the same meaning assigned to it under the Second Schedule to the Investment Services Act, whether or not issued in Malta;

"funds" means banknotes and coins, scriptural money, electronic money and virtual financial assets;

"initial virtual financial asset offering" or "initial VFA offering" means a method of raising funds whereby an issuer is issuing virtual financial assets and is offering them in exchange for funds;

"inspector" means an inspector appointed under article 40;

"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;

"licence" means a licence to provide a VFA service or services granted by the competent authority in terms of article 15;

"licence holder" means a person who holds a licence under this Act;

"Malta's international commitments" means Malta's commitments, responsibilities and obligations arising out of membership of, or affiliation to, or relationship with, any international, global or regional organisations or grouping of countries or out of any treaty, convention or other international agreement, however called, whether bilateral or multilateral, to which Malta is a party;

"market abuse" means insider dealing, the unlawful disclosure of inside information and market manipulation in relation to any transaction, order or behaviour concerning any virtual financial asset;

"Member State" means a Member State of the European Union;

"MIFID" means Directive 2014/65/EU of the European

Parliament and of the Council of 15 May, 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"Minister" means the Minister responsible for the regulation of Financial Services;

"recognised jurisdiction" means a member of the European Union or the EEA or the Organisation for Economic Co-operation and Development as well as any other jurisdiction approved by notice of the Minister from time to time for the purpose of this definition;

"overseas regulatory authority" means an authority in a country or territory outside Malta that is not a Member State or EEA State which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the competent authority as defined in the Malta Financial Services Authority Act;

Cap. 330.

"person" means a natural or legal person in terms of law;

"prescribed" means prescribed by regulations made under this Act;

"qualifying holding" means a direct or indirect holding in a legal person which represents ten per cent (10%) or more of the capital or of the voting rights in such person which makes it possible to exercise a significant influence on the administration of the person in which that holding subsists and includes the holding of DLT assets with voting, control or ownership rights, and "qualifying holder" shall be construed accordingly;

"resident in Malta" means an individual whose habitual residence is in Malta;

"Rules" refers to rules issued by the competent authority in terms of this Act;

"smart contract" means a form of technology arrangement consisting of -

(a) a computer protocol; or

(b) an agreement concluded wholly or partly in an electronic form, which is automatable and enforceable by computer code, although some parts may require human input and control and which may be also enforceable by ordinary

C 784

legal methods or by a mixture of both;

S.L. 373.01 "subject person" shall have the same meaning assigned to it under regulation 2 of the Prevention of Money Laundering and Funding of Terrorism Regulations;

Cap. 386. "subsidiary" has the same meaning assigned to it under article 2 of the Companies Act;

Cap. 330. "Tribunal" means the Financial Services Tribunal established under article 21 of the Malta Financial Services Authority Act;

"unit" means any representation of the rights and interests in a legal person and "unit holder" shall be construed accordingly;

"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),

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;

"VFA agreement" means any agreement the making or performance of which, by either party, constitutes a service or activity licensable under this Act;

"VFA exchange" means a DLT exchange operating in or from within Malta, on which only virtual financial assets may be transacted in accordance with the rules of the platform or facility, which is licensed by the competent authority under this Act to provide such services;

"VFA exchange operator" means a person or persons who manages and, or operates the business of a VFA exchange and may be the VFA exchange itself;

"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 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;

"virtual token" means a form of digital medium recordation that has no utility, value or application outside of the DLT platform on which it was issued and may only be redeemed for funds on such platform directly by the issuer of such DLT asset:

Provided that electronic money shall be excluded from this definition;

"whitepaper" means a document in such form and containing such information as specified in article 4 and the First Schedule.

(3) Any reference in this Act to any law, or provision thereof, shall be construed as a reference to that law or provision as from time to time in force, and shall include a reference to any enactment replacing such law or provision, and to any subsidiary legislation made thereunder.

(4) In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese text, the English text shall prevail.

PART II

Initial VFA Offerings

3. (1) 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):

Initial VFA offerings and admission to trading on DLT exchange to be made with a registered whitepaper.

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

C 786

of the provisions of this Act.

(2) (a) 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 -

(i) a member of the issuer's board of administration or its agent authorised in writing; and

(ii) the VFA agent in terms of article 7 by way of confirmation that the whitepaper is in compliance with this article and article 4,

has been delivered to the competent authority.

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

Dating of whitepaper and matters to be stated therein.

4. (1) Every whitepaper shall -

(a) be dated;

(b) state the matters specified in the First Schedule; and

(c) include a statement by the board of administration confirming that the whitepaper complies with the requirements of article 3 and of this article.

(2) A condition requiring or binding an investor in an initial VFA offering to waive compliance with any requirement of this article or purporting to affect the investor with notice of any contract, document or matter not specifically referred to in the whitepaper shall be void.

Website.

5. Where the issuer maintains a website, its homepage shall at least contain such information and in such format as may be required by the competent authority by means of Rules issued under this Act.

Advertisements.

6. (1) Any type of advertisements relating to either an initial VFA offering or the admission of a virtual financial asset to trading on a DLT exchange shall satisfy the following requirements:

(a) advertisements shall be clearly identifiable as such. The information contained in the advertisement shall not be inaccurate or misleading. This information shall also be consistent with the information contained in the whitepaper, if already published in terms of article 9(2), or with the

information required to be in the whitepaper, if the whitepaper is to be published afterwards;

(b) an advertisement shall contain a statement that a whitepaper has been or will be published in terms of article 9(2) and the addresses and times at which copies of the whitepaper are or will be available to the public; and

(c) all information concerning the initial VFA offering or the admission to trading on a DLT exchange disclosed in an oral or written form, even if not for advertising purposes, shall be consistent with that contained in the whitepaper:

Provided that the term "information" shall be deemed for the purposes of this article to include the name of any person endorsing the issuer's whitepaper.

(2) Such information shall be included in the whitepaper or in a supplement thereto in accordance with the First Schedule.

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:

Requirement for appointment of VFA agent and obligations towards the competent authority.

(a) ensure that the issuer has satisfied all requirements as prescribed in the provisions of this Act and of any Rules or regulations issued thereunder, including *inter alia* that such issuer is a fit and proper person to carry out the activity or activities under article 3(1);

(b) 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;

(c) 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;

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

(e) disclose to the competent authority without delay any information or explanations that the competent authority may reasonably require for the purpose of verifying any

C 788

information which should be taken into account in considering an application for registration of a whitepaper;

(f) be independent from the issuer and shall provide a confirmation in writing of its independence to the competent authority;

(g) 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;

(h) 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;

(i) submit to the competent authority on behalf of the issuer on an annual basis a certificate of compliance within the meaning of article 32, which shall apply *mutatis mutandis*; and

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

(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.

(4) Articles 13(1), 14(1) and (2), 15(1), (2)(a), (3) and (5) to (8), 17, 18(a), 19, 20, 21(1) and (2), 22, 24, 25(1), 26, 27, 28 and 31 shall apply to VFA agents *mutatis mutandis*.

8. (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:

Admission of virtual financial assets to trading.

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

Provided further that where a person under this sub-article is an issuer within the meaning of this Act, the reference to "VFA exchange" shall be read as a reference to "DLT exchange".

(2) Where, further to an application made under sub-article (1), an issuer's virtual financial assets are admitted to trading, the issuer shall comply with all the applicable requirements as prescribed in this Act and any regulations made and Rules issued thereunder for as long as such virtual financial assets remain admitted to trading:

Provided that the provisions of article 3(1) and of this sub-article shall not apply insofar as the said virtual financial assets have been admitted to trading irrespective of the issuer's will.

9. (1) An issuer shall:

Applicable principles.

- (a) conduct its business with honesty and integrity;
- (b) communicate with his investors in a fair, clear and not misleading manner;
- (c) conduct its business with due skill, care and diligence;
- (d) identify and manage any conflict of interest that may arise;
- (e) have effective arrangements in place for the protection of investors' funds;
- (f) have effective administration arrangements;
- (g) maintain all of its systems and security access protocols to appropriate international standards; and
- (h) be considered as a subject person.

(2) Where an issuer maintains a website in terms of article 5 and is required to make public any information or provide notice to the public, the issuer shall be considered to have complied with this obligation if it publishes such information or notice on his website.

C 790

Civil liability for misstatements in whitepaper, advertisements and website.

10. (1) The issuer shall be liable for damages sustained by a person as a direct consequence of such person having bought virtual financial assets, either as part of an initial VFA offering by such issuer or on a DLT exchange, on the basis of information contained in the whitepaper, website or advertisement by reason of any untrue statement included therein:

Provided that a statement included in a whitepaper, website or advertisement shall be deemed to be untrue if it is misleading or otherwise inaccurate or inconsistent, either wilfully or in consequence of gross negligence, in the form and context in which it is included:

Provided further that a statement shall be deemed to be included in a whitepaper if it is contained therein or in any document or information referred to therein or issued therewith.

(2) No person shall be liable under this article if -

(a) he proves that he believed and had reasonable grounds to believe, that the statement was true; or

(b) on becoming aware of the untrue statement, he immediately gave reasonable public notice in terms of article 9(2) of the untruthfulness of the statement.

(3) No person shall be liable for statements made in the summary referred to in the First Schedule, including the translation thereof, except when such statements are misleading, inaccurate or inconsistent, when read together with the other parts of the whitepaper, or if it does not provide, when read together with the other parts of the whitepaper, key information in order to aid investors when considering whether to invest in such virtual financial assets. The summary shall contain a clear warning to that effect.

Cross-border offers and admission to trading.

11. The offering of virtual financial assets, or the admission to trading on a DLT exchange, in a country outside Malta shall be subject to the laws of that country.

Powers of the competent authority.

12. Without prejudice to any other powers of the competent authority under other provisions of the Act, the competent authority shall also have the power to:

(a) require the inclusion in the whitepaper, advertisements or the issuer's website, as applicable, of supplementary information necessary for investor protection as the competent authority may specify;

(b) require the amendment in the whitepaper,

advertisements or the issuer's website, as applicable, of any information necessary for investor protection as the competent authority may specify;

(c) suspend an initial VFA offering or the trading on a DLT exchange or prohibit or suspend advertisements if the competent authority, in its reasonable discretion, believes or suspects that a provision of this Act has been infringed;

(d) prohibit an initial VFA offering or trading on a DLT exchange if the provisions of this Act have been infringed or if the competent authority, in its reasonable discretion, believes or suspects that they have been or could be infringed; and

(e) make public the fact that an issuer is failing to comply with his obligations under any provision of the Act and may disclose measures or sanctions imposed on any person responsible for the issue, circulation or distribution of a whitepaper, unless such disclosure would cause disproportionate damage to the persons involved.

PART III

Licensing Requirements

13. (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:

Licensing and determination requirement.

Provided that, insofar 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.

(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

C 792

(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.

PART IV

Application, Grant, Cancellation etc. of Licences

Application for
a licence.

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;

(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.

(3) The VFA agent shall be required to be satisfied 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*.

15. (1) The competent authority may grant or refuse to grant a licence applied for under this Act:

Where the competent authority may grant or refuse to grant a licence.

Provided that the competent authority shall only grant a licence upon being satisfied that the conditions laid down in this article have been met and such licence may be general or may be restricted to particular specified VFA services.

(2) The conditions referred to in sub-article (1) shall consist of the following and shall be satisfied on an ongoing basis:

(a) the applicant is a fit and proper person to provide the VFA services concerned and that the applicant will comply with and observe the requirements of this Act and any regulations made and Rules issued thereunder and which are applicable to it;

(b) where the applicant is a natural person, such person is resident in Malta;

(c) where the applicant is a legal person:

(i) it is constituted either in Malta, in accordance with the laws of Malta, or in a recognised jurisdiction:

Provided that where the applicant is constituted in a recognised jurisdiction, it shall establish a branch in Malta in accordance with any local presence requirements prescribed or as may be prescribed; and

(ii) its purposes or objects are limited to acting as a licence holder and carrying on activities ancillary or incidental thereto, and do not include purposes or objects which are not compatible with the VFA services of a licence holder.

For the purposes of this sub-paragraph, a purpose or object referring to any activity that requires any kind of authorisation whatsoever by the competent authority under any Maltese law, other than this Act, shall be deemed to be incompatible with the VFA services of a licence holder:

Provided that where a licence holder proposes to engage in business activities which are not listed in the Second Schedule and are not compatible within the meaning of this sub-paragraph, the licence holder shall be required to establish a separate entity; and

C 794

(iii) its actual activities are compatible and connected with the VFA services of a licence holder.

(3) (a) In granting a licence the competent authority may subject it to such conditions as it may deem appropriate and having granted a licence it may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(b) For the better carrying out of the provisions of this Act, the competent authority may, from time to time, issue and publish Rules which shall be binding on licence holders and others as may be specified therein. Such Rules may lay down additional requirements, conditions and, or exemptions in relation to activities of licence holders and any other matters as the competent authority may consider appropriate:

Provided that different Rules may be issued by the competent authority with respect to different classes or categories of applications.

(4) Without prejudice to the generality of sub-articles (1) and (2), where a VFA exchange is managed or operated by a VFA exchange operator other than the VFA exchange itself, the competent authority shall establish by means of Rules how the different obligations are to be allocated between the VFA exchange and the VFA exchange operator.

(5) When considering whether to grant or refuse to grant a licence the competent authority shall, in particular, have regard to -

- (a) the protection of investors and the general public;
- (b) the protection of the reputation of Malta taking into account Malta's international commitments;
- (c) the promotion of innovation, competition and choice; and
- (d) the reputation and suitability of the applicant and all other parties connected with the applicant.

(6) Every licence shall specify the VFA service or services which the holder thereof has been licensed to provide and shall state the date on which it shall take effect.

(7) Without prejudice to the generality of sub-article (2), the conditions to which the competent authority shall subject a licence may be made applicable, or be prescribed to be applicable, to -

- (a) all licences;
- (b) certain categories of licences;
- (c) all licences granted to certain categories of licence holders;
- (d) all licences in relation to particular VFA services.

(8) Any requirement in this Act that a person be a fit and proper person to carry out certain activities or functions shall be interpreted as a requirement not only that such person be a fit and proper person to carry out such activities or functions, but also that any beneficial owner, qualifying holder, member of the board of administration and any other person who will effectively direct the business of the licence holder be a fit and proper person to carry out such activities or functions.

(9) Where a licence holder proposes to engage in business activities not listed in the Second Schedule but compatible within the meaning of sub-article (2)(c)(ii), the competent authority may require the establishment of a separate entity, where the proposed activities may in the opinion of the competent authority impair or threaten to impair either the financial soundness of the licence holder or the ability of the competent authority to monitor the licence holder's compliance with all the obligations laid down in this Act or any regulations and Rules issued thereunder.

16. (1) The competent authority shall establish a public register of all licence holders. This register shall also indicate the VFA services in relation to which each licence was issued.

Register of licence holders.

(2) Such register shall be publicly available for consultation, shall be accessible online and shall be updated on a regular basis.

17. The competent authority shall refuse to grant a licence under this Act in any of the following instances:

Where the competent authority shall refuse to grant a licence.

- (a) if the application is not submitted in accordance with the established form or in accordance with applicable procedure; or
- (b) if the applicable fees have not been paid; or
- (c) if the competent authority, in its reasonable discretion, is not satisfied that the applicant and all relevant persons mentioned in article 15(8) are fit and proper; or

C 796

(d) if it transpires that any information or submission made to the competent authority is materially false, misleading, inaccurate or incomplete; or

(e) if the competent authority, in its reasonable discretion, is not satisfied that -

(i) the applicant has sound and prudent management, robust administration arrangements and adequate internal control or security mechanisms:

Provided that such arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the VFA services to be provided by the applicant; or

(ii) where there are close links between the applicant and another person or persons, such links will not through any law, regulation, administrative provision or in any other manner prevent it from exercising effective supervision of that applicant under the provisions of this Act or any Rule:

Provided that the competent authority may from time to time, by means of Rules issued under this Act define the circumstances in which "close links" are to be regarded as existing between any two or more persons; or

(iii) the applicant will comply with all regulatory requirements applicable to licence holders of the relevant category, including those listed in article 23, and with any additional requirements that the competent authority considers necessary; or

(iv) that the VFA service or services being proposed is compliant with any law, regulations or Rules in force; or

(f) if the competent authority, in its reasonable discretion, believes that granting a licence to the applicant may pose a risk to investors, the general public, the reputation of Malta or the promotion of innovation, competition and choice; or

(g) if sufficient information as requested by the competent authority has not been provided.

18. The burden of proving -

Burden of proof.

(a) the person's qualification to hold a licence or to continue holding a licence; and, or

(b) the determination in terms of the proviso to article 13(1),

shall rest at all times on the applicant or the licence holder, as the case may be.

19. The granting of a licence is a concession and a revocable privilege, and no holder thereof shall be deemed to have acquired any vested rights therein or thereunder.

Revocable privilege.

20. A licence granted by the competent authority under this Act or a qualifying holding or beneficial ownership in a licence holder may not be assigned or transferred in any way whatsoever to any other person without the prior written consent of the competent authority, and any such assignment or transfer to any other person without the competent authority's consent shall be considered null and void and constitute sufficient grounds for the competent authority to cancel that licence.

Assignment and transferability.

21. (1) The competent authority may at any time cancel or suspend a licence in accordance with the provisions of this Act.

Power of competent authority to cancel or suspend licences.

(2) Without prejudice to the generality of sub-article (1), the competent authority may cancel or suspend a licence -

(a) if it considers that the holder thereof is not a fit and proper person to provide the VFA service he is authorised to provide; or

(b) if it considers that the holder thereof does not fulfil the requirements of, or has contravened, any of the provisions of this Act or of any regulations made or Rules issued thereunder, or has failed to satisfy or comply with any obligation or condition to which he or the licence is subject by virtue of or under this Act; or

(c) if the competent authority has been furnished by or on behalf of the licence holder with information which is false, inaccurate or misleading, or if the licence holder has obtained the licence by making false statements or by any other irregular means; or

(d) if the licence holder has not commenced to provide

the VFA service he has been authorised to provide within twelve months from the date of issue of the licence or has ceased to provide such VFA service; or

(e) if it considers it desirable to cancel or suspend the licence for the protection of investors and the general public, and the reputation of Malta taking into account Malta's international commitments; or

(f) at the request of the licence holder; or

(g) if the licence holder is declared bankrupt or goes into liquidation or makes a composition with its creditors or is otherwise dissolved; or

(h) if the licence holder has ceased to operate as a result of a merger with another licence holder; or

(i) in any of the circumstances under which the competent authority would have been precluded from issuing the licence under this Act or where under this Act it would have been entitled to refuse the grant of such licence; or

(j) after proper communication and investigation, at the written request of another competent regulatory authority which is carrying regulatory functions in relation to the relevant licence holder.

(3) The competent authority, where so required, shall notify the appropriate ESA and any other competent regulatory authority which is carrying out regulatory functions in relation to the relevant licence holder of any cancellation of a licence in terms of sub-article (1).

Notification of proposed refusal, variation, cancellation or suspension of a licence.

22. (1) Where the competent authority proposes -

(a) to vary any condition to which the licence is subject or to impose a condition thereon; or

(b) to refuse an application for a licence or to cancel or suspend a licence,

it shall give the applicant or the licence holder, as the case may be, notice in writing of its intention to do so, setting out the reasons for the decision it proposes to take.

(2) Every notice given under sub-article (1) shall state that the recipient of the notice may, within such reasonable period after the

service thereof as may be stated in the notice, make representations in writing to the competent authority giving reasons why the proposed decision should not be taken, and the competent authority shall consider any representation so made before arriving at a final decision.

(3) The competent authority shall as soon as practicable notify its final decision in writing to any of the persons to whom notice is to be given under sub-article (1).

PART V

Board of Administration and Obligations of Licence Holders

23. (1) Licence holders shall comply with and observe any applicable regulations made and Rules issued under this Act, including with reference to prudential requirements, and shall be considered as subject persons.

Applicable requirements and compliance with the Prevention of Money Laundering Act.

For the purposes of this sub-article, the term "prudential requirements" shall include requirements on administration, compliance, risk management, systems and security access protocols, financial resources, capital adequacy, professional indemnity insurance and any other related requirements included in the regulations made or Rules issued under this Act.

(2) Without prejudice to the generality of sub-article (1), a licence holder shall ensure that all of its systems and security access protocols are maintained at all times to appropriate high standards.

24. (1) The licence holder shall ensure that -

Board of administration.

(a) members of its board of administration shall at all times be of sufficient good repute, possess sufficient collective knowledge, skills and experience and commit sufficient time to perform their duties and be able to understand the licence holder's activities, including the main risks. In this regard, the licence holder shall devote adequate human and financial resources to the induction and training of members of its board of administration;

(b) the number of positions as administrator which may be held by a member of its board of administration at the same time shall take into account individual circumstances and the nature, scale and complexity of the licence holder's activities; and

(c) each member of its board of administration shall act

C 800

with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making.

(2) The board of administration of the licence holder, or the licence holder itself in the case of an individual, shall be vested with the responsibility to abide by all requirements under this Act and any regulations made and Rules issued thereunder:

Provided that the board of administration or the licence holder itself, as applicable, shall not be held responsible when they prove that they have acted in good faith pursuant to their fiduciary obligations and in terms of applicable legislation.

Changes of
information.

25. (1) The licence holder shall provide the competent authority with particulars in writing of any changes in the information provided under this Act as soon as such licence holder becomes aware of such changes and shall notify the competent authority, on a continuous basis, of any changes or circumstances which give rise to the existence of close links within the meaning in article 17(e).

(2) Notwithstanding the generality of sub-article (1), any substitutions or amendments which refer to upgrades, maintenance, innovative evolution or mere replacement of operating systems shall be notified to the competent authority where they have, or have the potential to have, a material impact on investors or they are not in any manner in accordance with any provision of this Act:

Provided that the competent authority may issue Rules in terms of article 15(3)(b) in order to prescribe mandatory notification in general or provide guidelines in particular cases.

Payment of fees.

26. Every licence holder shall pay to the competent authority such periodic fee, and within such time, as may from time to time be prescribed.

Fiduciary
obligations.

27. (1) Licence holders shall act honestly, fairly and professionally and shall comply with the requirements laid down in this Act and any regulations made and Rules issued thereunder, as well as with other legal and regulatory requirements as may be applicable.

(2) A licence holder shall be subject to fiduciary obligations towards its customers:

Provided that in the event of a breach of this article, the competent authority may issue a determination in this regard

determining *inter alia* on the compensation of the customers towards whom the licence holder's fiduciary obligations have been breached.

28. (1) Notwithstanding anything contained in any other law, the consent of the competent authority given in writing shall be required before a person may lawfully -

Participation in a licence holder, mergers, reconstructions, divisions and changes in capital or voting rights.

(a) acquire, directly or indirectly, a qualifying holding in a licence holder;

(b) increase, directly or indirectly, an existing holding which is not a qualifying holding so as to cause it to become a qualifying holding in a licence holder;

(c) further increase, directly or indirectly, such qualifying holding in a licence holder as a result of which the proportion of the voting rights or of the capital held would reach or exceed twenty per cent (20%), thirty per cent (30%) or fifty per cent (50%) or so that the licence holder, where a company, would become its subsidiary;

(d) dispose, directly or indirectly, of a qualifying holding in a licence holder;

(e) reduce, directly or indirectly, a qualifying holding so as to cause it to cease to be a qualifying holding; or

(f) reduce, directly or indirectly, a qualifying holding so that the proportion of the voting rights or of the capital held would fall below twenty per cent (20%), thirty per cent (30%) or fifty per cent (50%) or so that the licence holder, where a company, would cease to be its subsidiary.

(2) Without prejudice to the other provisions of this Act and notwithstanding anything contained in any other law, and without prejudice to sub-article (1), the consent of the competent authority given in writing shall be required before a licence holder may lawfully -

(a) sell or dispose of its business or any significant part thereof;

(b) merge with any other company, whether licensed under this Act or not:

Provided that for the purposes of this sub-article, no merger with a company that requires registration or any other kind of authorisation whatsoever by the competent authority

C 802

under any Maltese law, other than this Act, or which holds any other equivalent authorisation by a European or overseas regulatory authority shall be permissible under this Act;

(c) undergo any reconstruction or division; or

(d) increase or reduce its capital or effect any material change in voting rights.

(3) It shall be the duty of all members of the board of administration of a licence holder to notify the competent authority immediately upon becoming aware that such person or licence holder intends to take any of the actions set out in sub-articles (1) and (2).

(4) Upon receipt of such notification or receipt of such information as the competent authority may lawfully require, whichever is the later, the competent authority shall issue a notice -

(a) granting unconditional consent to the taking of the action; or

(b) granting consent to the taking of the action subject to such conditions as the competent authority may deem appropriate; or

(c) refusing consent to the taking of the action, and if it refuses to grant consent, it shall inform the person or the licence holder concerned in writing for the reason for its refusal.

(5) In assessing the notification and the information referred to in this article, the competent authority shall, in order to ensure the sound and prudent management of the licence holder in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the licence holder, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition in accordance with the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation, knowledge, skills and experience, as set out in article 24(1)(a), of any member of the board of directors and any member of senior management who will direct the business of the licence holder as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the licence holder in which the acquisition is

proposed;

(d) whether the licence holder will be able to comply and continue to comply with the prudential requirements based on this Act and any regulations made and Rules issued thereunder and, where applicable, other European Union laws, including whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authority and the overseas regulatory authorities and determine the allocation of responsibilities among the competent authority and the overseas regulatory authorities;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2015/849/EU is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(6) If any person or any licence holder takes or decides to take any action set out in sub-articles (1) or (2) without obtaining the consent of the competent authority, then, without prejudice to any other penalty which may be imposed under this Act, the competent authority shall have the power to make an order:

(a) restraining such person or licence holder from taking, or continuing with, such action;

(b) declaring such action to be null and void;

(c) requiring such person or licence holder to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(d) restraining such person or licence holder from exercising any rights which such action would, if lawful, have conferred upon them; or

(e) restraining such person or licence holder from taking any similar action or any other action within the categories set out in sub-articles (1) and (2).

29. (1) No person, other than licence holders, may issue or cause to be issued an advertisement relating to a VFA service in or from within Malta unless its contents have been vetted and approved by the licence holder's board of administration. Advertisements.

C 804

(2) The competent authority may, from time to time, issue such Rules or directives to licence holders as it may consider appropriate in order to set minimum standards and requirements which are to be observed by licence holders when issuing or approving advertisements in accordance with sub-article (1). Such Rules or directives may also include provision for such exemptions or conditions as may be specified therein and may make different provision for different cases or classes of cases, under such terms and conditions as may be prescribed.

(3) The competent authority may impose such conditions, limitations and restrictions on a licence holder with respect to the issue or approval of advertisements, as it may consider appropriate.

Website.

30. Where the licence holder maintains a website, the person responsible for the licence holder's compliance function shall ensure that its homepage at least contains such information and in such format as may be required by the competent authority by means of Rules issued under this Act.

VFA licence holders unable to meet obligations.

31. Notwithstanding any investigation provided for in this Act, where a VFA licence holder considers that it is likely to become unable to meet its obligations, it shall immediately inform the competent authority in writing.

Certificate of compliance.

32. Without prejudice to any other obligations imposed under this Act, a licence holder shall be required to submit to the competent authority on an annual basis a certificate of compliance in the form and manner required by the competent authority confirming the licence holder's compliance with all the obligations laid down in this Act or any regulations made and Rules issued thereunder during the period concerned:

Provided that in the event of a breach of any provision of this Act, regulations made or Rules issued thereunder, the licence holder shall include the particular breach and any other additional information as may be required by the competent authority in the compliance certificate:

Provided further that, where the licence holder is an individual, the licence holder itself shall be required to submit the compliance certificate to the competent authority.

PART VI

Prevention of Market Abuse

Scope and jurisdiction.

33. The prohibitions and requirements laid down in this Part

shall apply to acts carried out by any person in Malta or outside Malta, as prescribed or as may be prescribed by or under this Act or regulations made or Rules issued thereunder, concerning virtual financial assets that are admitted to trading on a VFA exchange, or for which a request for admission to trading on such VFA exchange has been made.

34. (1) Insider dealing, recommending or inducing another person to engage in insider dealing, as referred to in this article, shall constitute an offence when committed intentionally. Prohibition of insider dealing.

(2) It shall also be an offence to attempt to commit any of the offences referred to in sub-article (1).

(3) Inciting, aiding or abetting any of the offences referred to in sub-article (1) shall also amount to an offence.

(4) For the purposes of sub-article (1), insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, virtual financial assets to which that information relates.

(5) For the purposes of sub-article (1), recommending that another person engage in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and:

(a) recommends, on the basis of that information, that another person acquire or dispose of virtual financial assets to which that information relates, or induces that person to make such an acquisition or disposal; or

(b) recommends, on the basis of that information, that another person cancel or amend an order concerning a virtual financial asset to which that information relates, or induces that person to make such a cancellation or amendment:

Provided that the use of the recommendations or inducements amounts to insider dealing where the person using the recommendation or inducement knows that it is based upon inside information.

(6) The provisions of this article apply to any person in the situations or circumstances prescribed or as may be prescribed.

C 806

Prohibition of unlawful disclosure of inside information.

35. (1) Unlawful disclosure of inside information shall also constitute an offence under this Act when committed intentionally.

(2) Inciting, aiding or abetting the offence referred to in sub-article (1) shall also amount to an offence.

(3) For the purposes of this article, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except in cases where such disclosure is permitted pursuant to any provisions of this Act, regulations made or Rules issued thereunder.

(4) The provisions of this article apply to any person in the situations or circumstances prescribed or as may be prescribed.

(5) For the purposes of this Act, the onward disclosure of recommendations or inducements referred to in article 34(5) amounts to unlawful disclosure of inside information where the person disclosing the recommendation or inducement knows that it was based on inside information.

(6) This article shall be applied in accordance with the laws of the freedom of the press and the freedom of expression.

Prohibition of market manipulation.

36. (1) Market manipulation, as referred to in this article, shall constitute an offence in severe cases or when committed intentionally.

(2) It shall also be an offence to attempt to commit any of the offences referred to in sub-article (1).

(3) Inciting, aiding or abetting the offence referred to in sub-article (1) shall also amount to an offence.

(4) For the purposes of this article, "market manipulation" means the manipulation or attempted manipulation of a virtual financial asset or a benchmark through the employment of an abusive strategy that may be carried out by any available means of trading or other means, as prescribed or as may be prescribed.

Detection and report on market abuse.

37. Without prejudice to any other obligations under this Act, regulations made or Rules issued thereunder, a VFA exchange shall have in place effective systems, procedures and arrangements to monitor and detect market abuse and where it suspects that there may exist circumstances to indicate that any violation of the provisions under this Part may have been committed, is being committed or is likely in the circumstances to be committed, it shall immediately report such suspicion to the competent authority.

PART VII

Regulatory and Investigatory Powers

38. (1) The Minister, acting on the advice of the competent authority, may make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such regulations, in particular, do any of the following:

Minister's
power to make
regulations.

(a) amend the definitions contained in this Act;

(b) regulate the activities of issuers, VFA agents and licence holders, as well as services provided and activities carried on in conjunction therewith or in relation thereto; provide for any matter he may deem expedient including the creation and exercise of rights by or for the benefit of the public, the imposition of duties and obligations on the issuers, VFA agents, licence holders or persons responsible for the management or administration thereof, the regulation of branches established by licence holders, outsourcing or agency arrangements and of any fees and, or any other charges imposed directly or indirectly on investors; prescribe investment restrictions applicable to retail investors investing or wishing to invest, as applicable, in virtual financial assets, and for the purpose of this paragraph "retail investor" shall mean an investor who is considered to be a retail client in terms of Article 4(11) of MiFID but shall exclude any retail client who may be treated as professional on request within the meaning of Annex II to MiFID; provide for the safekeeping and custody of the cryptographic keys and for the requirement to appoint a custodian, and prescribe and regulate in the most extensive manner the functions, duties, responsibilities and obligations of the custodian, and for the purpose of this paragraph "custodian" shall include a sub-custodian; require the keeping of records with respect to the transactions and financial position of issuers and licence holders and for the inspection of those records, and prescribe reporting and disclosure requirements, including the preparation of periodical reports and the furnishing of those reports to investors, unitholders and to others;

(c) establish schemes or other arrangements for the compensation of investors in cases where licence holders or any categories thereof as may be specified, are unable to satisfy their obligations towards investors or claims in respect of any liability incurred by them in connection with the carrying out of any activity in regard to which they are licensed, and to regulate the management and the financing of any such schemes or

arrangements, and the contributions and levies to be paid thereto, to set the minimum and maximum levels of compensation payable thereunder and may under such schemes and arrangements distinguish between different classes of investors and exclude certain classes from compensation, and to make provision for the regulation of and for any other aspect related to such schemes or arrangements and may moreover provide that such schemes or arrangements as may be prescribed shall have a legal personality distinct from that of the contributors thereto and of the competent authority and provide for the judicial and legal representation thereof; and such schemes shall be exempt from the payment of income tax as from the date of establishment of such schemes;

(d) define the criteria for determining whether a holding is an indirect holding for the purposes of determining whether a qualifying holding exists;

(e) define the criteria for determining whether the systems and security access protocols of issuers, applicants or licence holders, as applicable, meet or are maintained to the appropriate high international standards that may be established from time to time;

(f) regulate the promotion or sale by or on behalf of any issuer or licence holder, and by any means, of an initial virtual financial asset offering or of a VFA service or of any DLT asset, including the criteria and procedures for the granting or refusing of consent by the competent authority pursuant to the provisions of article 30;

(g) amend the provisions of article 50 on the circumstances in which auditors are obliged to communicate information to the competent authority, to prescribe regulations governing the disclosure by auditors of information pursuant to article 50 and to establish supervisory and disciplinary procedures for auditors in respect of their duties under the provisions of article 50;

(h) regulate the drawing-up, registration, publication and distribution in Malta of whitepapers relating to offerings, admission or trading of virtual financial assets on a VFA exchange where the respective issuer's head office is located in a country outside Malta and to make provision for the recognition of such whitepapers taking into account the obligations emanating from European legislation or Malta's international commitments;

(i) provide for and regulate the payment by any person of registration, licence or other fees and such other charges payable to the competent authority in respect of any matter provided for, by or under this Act or any regulations made under this article, as may be prescribed;

(j) exempt any issuer, VFA agent, licence holder or any other person, VFA service, DLT asset, whitepaper or advertisement from any one or more of the provisions of this Act subject to such variations, additions, adaptations and modifications as may be prescribed and subject to such conditions or other requirements, including other forms of registration, authorisation and notification procedures, as may be prescribed;

(k) establish prudential requirements for VFA agents and licence holders; regulate the supervision on a consolidated basis, provide for the consultation, co-ordination, co-operation and the sharing and exchange of information with national, European and other third country regulatory authorities as may be necessary; provide for the exchange of information with the ESRB, central banks which are members of the European System of Central Banks, including the Central Bank of Malta, exchange of information with ESAs and exchange of information with other departments of government administrations in other Member States responsible for the law on the supervision of institutions, financial institutions and insurance undertakings and with inspectors acting on behalf of those departments as may be necessary; provide for the establishment of colleges of supervisors; provide for the exercise of powers by the competent authority on issuers, VFA agents and licence holders, or their effective managers; provide for the establishment and imposition of administrative penalties on issuers, VFA agents, licence holders or others as specified therein or other measures for the contravention of any of the regulations, and to provide for appeals therefrom to the Tribunal or any other tribunal that he may prescribe; provide for the obligations of the competent authority to report to the ESAs and the European Commission as may be required and specified in the said regulations;

(l) provide for reporting and other requirements and conditions which a person must satisfy, on a continuing and ongoing basis and to establish the circumstances and the manner in which requirements and conditions may be varied, suspended or revoked;

C 810

(m) transpose, implement and give effect to the provisions and requirements of Directives, Regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that may be issued thereunder and relating to DLT assets, issuers, VFA agents, licence holders and others as may be specified therein; regulations made under this paragraph, and strictly related to transposition or implementation as aforesaid, may provide that any provision of this Act or of any other law shall not apply to matters falling under the regulations, and that in so far as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail;

(n) provide for arrangements for the investigation of complaints about issuers, VFA agents or licence holders;

(o) prescribe anything that is to be or which may be prescribed;

(p) provide for any matter incidental to or connected with any of the above.

(2) Regulations made under this article may also contain provisions for enabling a person who has entered, or offered to enter, into a VFA agreement with a licence holder to rescind the agreement or withdraw the offer within such period and in such manner as may be prescribed, and in particular, but without prejudice to the generality of the foregoing, may make provision -

(a) for requiring the service of notice with respect to the rights exercisable under the regulations;

(b) for the restitution of assets and the making or recovery of payments where those rights are exercised;

(c) for such other matters as are incidental to or connected with any of the above.

(3) Regulations made under this article, may be made subject to such exemptions or conditions as may be specified therein, may make different provision for different cases, circumstances or purposes and may give to the competent authority such powers of adaptation of the regulations as may also be so specified.

(4) Where regulations have been made in terms of this article,

the competent authority may issue Rules within the meaning of article 15 for the better carrying out and to better implement the provisions of the regulations.

(5) Regulations made under this article may impose:

(a) administrative penalties which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be;

(b) punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine (*multa*) of fifteen million euro (€15,000,000) or up to three times the profits made or losses avoided by virtue of the offence, whichever is the greater, or to imprisonment for a term not exceeding six years, or both such fine and imprisonment; and

(c) administrative penalties and fines higher than one hundred and fifty thousand euro (€150,000), where deemed necessary or appropriate for any contravention of or failure of compliance with any EU Directive or EU Regulation or of any regulations made under this article to transpose or to give effect to any EU Directive or EU Regulation.

(6) Regulations made under this Act and any amendment or revocation of such regulations, may be published in the English language only.

(7) The exercise of any of the powers assigned under this article shall be subject to any obligations or rights arising from Malta's international commitments.

39. (1) The competent authority may, by notice in writing, require -

Power of competent authority to require information.

(a) any person who is or was providing, or who appears to be or to have been providing a VFA service as well as any persons that control them or are controlled by them;

(b) any issuer, VFA agent, intermediary involved in the initial virtual financial asset offering as well as any persons that control them or are controlled by them;

(c) any person who has issued, or appears to have issued an advertisement falling within the provisions of articles 6 or 29;

C 812

- (d) an auditor of a person regulated under this Act;
- (e) any other person who appears to be in possession of relevant information or documentation,

to do all or any of the following:

(i) to furnish to the competent authority, at such time and place and in such form as it may specify, such information and documentation as it may require, including the power to require existing telephone, existing data traffic and existing DLT records, with respect to any such service, DLT asset, advertisement or website as aforesaid, or with respect to any person with whom the licence holder or VFA agent has close links within the meaning of article 17;

(ii) to review the determination made in terms of articles 3 or 13 and confirm in writing the competent authority that such determination is true and accurate or otherwise;

(iii) to furnish to the competent authority any information or documentation aforesaid verified in such manner as it may specify;

(iv) to attend before the competent authority, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation with respect to any such service, scheme or advertisement as aforesaid:

Provided that the powers in this article shall not permit the competent authority to demand information about source codes of any proprietary technology or of information of highly sensitive, intellectual property which is protected by law and which relates to innovative DLT or smart contracts.

(2) Without prejudice to anything which the competent authority may require under sub-article (1), all information in respect of virtual financial assets traded on a VFA exchange and held by the exchange shall be freely accessible to the competent authority:

Provided that the provisions of this sub-article shall also be applicable where a virtual financial asset is determined by the competent authority to be electronic money or a financial instrument in terms of article 13(2)(b).

(3) The competent authority may take copies of any documents furnished or provided under this article.

(4) Where the person required to provide information or documentation under this article does not have the relevant information or documentation, he shall disclose to the competent authority where, to the best of his knowledge, that information or documentation is, and the competent authority may require any person, whether indicated as aforesaid or not, who appears to it to be in possession of that information or documentation, to provide it.

(5) A statement made and documentation provided in pursuance of any requirement under this article may be used in evidence against the person making the statement or providing the documentation as well as against any person to whom they relate.

(6) The provisions of this article shall not apply to information or documentation which is privileged in accordance with the provisions of article 642(1) of the Criminal Code or which refer to cryptographic keys belonging to the person required to provide information or documentation under this article: Cap. 9.

Provided that the provisions of this sub-article shall not apply to the actual information protected by the cryptographic keys.

(7) The power to require the production of documentation under the provisions of this article shall be without prejudice to any lien or charge claimed by any person in relation to such documentation.

(8) Where the competent authority has appointed a person under article 42(1)(c), such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the competent authority by this article and a requirement made by it shall be deemed to be and have the same force and effect as a requirement of the competent authority.

(9) Without prejudice to the other provisions of this article, a licence holder may be required to submit to the Central Bank of Malta such information as the Bank may reasonably require for the discharge of its duties under the Central Bank of Malta Act. Cap. 204.

40. (1) The competent authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of any issuers or licence holders or any other persons referred to in article 39(1). Appointment of inspectors.

(2) An inspector appointed under sub-article (1) -

C 814

(a) may also, if he thinks it necessary or expedient for the purposes of that investigation, investigate the affairs of any person mentioned in sub-article (1);

(b) shall have and may exercise all the powers conferred on the competent authority by article 39, and any requirement made by it shall be deemed to be and have the same force and effect as a requirement of the competent authority;

(c) may, and if so directed by the competent authority shall, make interim reports and on the conclusion of his investigation shall make a final report to the said authority.

(3) The competent authority shall have power to order that all expenses of, and incidental to, an investigation pursuant to this article be paid by the persons concerned.

(4) For the purposes of this article, an inspector shall be a person considered by the competent authority as possessing suitable expertise to exercise such function.

Power to issue directives.

41. (1) Without prejudice to any of the powers conferred on it by articles 39 and 40, the competent authority may, whenever it deems it necessary, and whether upon a report by an inspector appointed under article 40 or not, give, by notice in writing, such directives as it may deem appropriate in the circumstances; and any person as is referred to in article 39(1) to whom the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive or further directive.

(2) Without prejudice to the generality of the foregoing provisions of this article, a directive under this article may -

(a) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, including any requirement emanating from European Union legislation, and confer powers, with respect to any offering or trading of DLT assets, VFA service, transaction or other act, or to any assets, or to any other thing whatsoever;

(b) require that any person having functions in relation to the issuer, VFA agent or licence holder be prohibited, temporarily or otherwise, suspended from carrying out activities under this Act, or removed and replaced by another person acceptable to the competent authority;

(c) require an issuer, VFA agent, licence holder or any

person who is or was, or who appears to be or to have been undertaking an activity or providing a service regulated under this Act to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the directive, which may provide for the appointment of a person to take possession and control of all documents, records and assets belonging to or in the possession or control of the issuer, VFA agent, licence holder or such other person;

(d) require a licence holder to submit a financial recovery plan, as may be determined in the Rules, if it considers that the interests of investors, consumers, creditors or other interested persons are likely to be prejudiced owing to a deterioration in the financial position of the licence holder;

(e) require the removal of a virtual financial asset from trading on a VFA exchange or the suspension of trading in such virtual financial asset:

Provided that the provisions of this paragraph shall also be applicable where a virtual financial asset is determined by the competent authority to be electronic money or a financial instrument in terms of article 13(2)(b);

(f) request any person to take steps to reduce the size of the position or exposure:

Provided that in applying the provisions of paragraph (c), the competent authority may also appoint a competent person to act as liquidator for the purposes of winding up the affairs of an issuer, VFA agent or licence holder under this Act; and such person shall be the liquidator of the issuer, VFA agent or licence holder for all purposes of law to the exclusion of any other person.

(3) The power to give directives under this article shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.

(4) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this article.

42. (1) Without prejudice to the powers conferred to the competent authority under this Act, the competent authority may, where it is satisfied that sufficient circumstances exist, proceed to take any one or more of the following measures:

Power of the competent authority to protect the public interest.

C 816

(a) appoint a person to advise the issuer, VFA agent or licence holder in the proper conduct of their business;

(b) appoint a person to take charge of the assets of the issuer, VFA agent or licence holder, or any portion of them, for the purposes of safeguarding the interests of investors, consumers, creditors or, if any, unitholders, of the issuer, VFA agent or licence holder;

(c) appoint a person to assume control of the business of the issuer, VFA agent or licence holder, either to carry on that business or to carry out such other function or functions in respect of such business, or part thereof, as the competent authority may direct;

(d) fix the remuneration to be paid by the issuer, VFA agent or licence holder to any person appointed under article 41 or under this article;

(e) do such other act as it may deem appropriate in the circumstances to give better effect to the implementation of the provisions of this article,

and, having adopted any one or more of the measures aforesaid, the competent authority may further proceed in any one or more such measures, whether in addition thereto or in substitution therefor.

(2) Where a person is appointed by the competent authority -

(a) under sub-article (1)(a), it shall be the duty of the issuer, VFA agent or licence holder, as applicable, to act in accordance with the advice given by such person unless and until the competent authority, on representation made to it, directs otherwise;

(b) under sub-article (1)(b), the issuer, VFA agent or licence holder, as applicable, shall deliver to such person all the assets, whether movable or immovable, of which he is placed in charge, and all the powers, functions and duties of the said issuer, VFA agent or licence holder in respect of those assets, including, if such issuer, VFA agent or licence holder is a legal person, those exercisable by the legal person in a general meeting, or by the members of the board of administration, or by any other person, including the legal and judicial representation of such legal person, shall be exercisable by and vest in the person appointed under the said paragraph to the exclusion of any other person;

(c) under sub-article (1)(c), the issuer, VFA agent or licence holder, as applicable, shall submit its business to the control of such person and shall provide such person with such facilities as may be required to carry on that business or to carry out the functions assigned to such person under the said paragraph; and all the powers, functions and duties of the said issuer, VFA agent or licence holder, including, if such issuer, VFA agent or licence holder is a legal person, those exercisable by the legal person in a general meeting, or by the members of the board of administration, or by any other person, including the legal and judicial representation of such legal person in all matters, shall be exercisable by and vest in such person to the exclusion of any other person.

(3) The competent authority may, where it feels it is in the best interest of the public so to do, make or issue public statements or notices giving warnings or information about any measure taken in terms of this article.

(4) The competent authority may require the issuer, VFA agent or licence holder concerned to pay all the expenses of, and incidental to, the publication or issue of public statements or notices pursuant to this article, or such part thereof as it may deem appropriate; and any sum so due shall be recoverable by the competent authority in the same manner as an administrative penalty imposed under this Act.

43. (1) Any officer, employee or agent of the competent authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under article 39 or whose affairs are being investigated under article 40, for the purpose of obtaining there the information or documents required by that notice, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said articles. Right of entry.

(2) Where any officer, employee or agent of the competent authority has reasonable cause to believe that if such notice as is referred to in sub-article (1) were served it would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, such person may, on producing, if required, evidence of his authority, enter any premises referred to in sub-article (1) for the purpose of obtaining there any information or documents specified in the authority, being information or documents that could have been required under such notice as is referred to in sub-article (1).

(3) For the purposes of any action taken under the provisions

of this article, the competent authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in it for the prevention of offences and the enforcement of law and order.

Discontinuation
or suspension
from trading on
a VFA
exchange.

44. (1) (a) The competent authority may, in accordance with Rules issued under this Act, and whether of its own motion or at the request of a VFA exchange on which a virtual financial asset has been admitted to trading, discontinue or suspend the trading of such virtual financial asset if it is satisfied that there are circumstances which warrant such suspension or discontinuance.

(b) Without prejudice to the right of the competent authority under paragraph (a) to demand suspension or removal of a virtual financial asset from trading, a VFA exchange operator may suspend or remove from trading a virtual financial asset which no longer complies with the definition of a virtual financial asset or the bye-laws of the VFA exchange unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the VFA exchange. The VFA exchange operator that suspends or removes from trading a virtual financial asset shall make public this decision and communicate the relevant information to the competent authority. Where required, the competent authority shall inform the European regulatory authorities of the other Member States or EEA States of this decision.

(c) When the competent authority demands the suspension or removal of a virtual financial asset from trading on one or more VFA exchanges, it shall immediately make public its decision and inform any regulatory authority, as required, pursuant to the obligations emanating from European legislation or Malta's international commitments.

(d) A VFA exchange operator that suspends or removes from trading a virtual financial asset shall also suspend or remove any derivatives thereof which relate or are referenced to that virtual financial asset as may be necessary to support the objectives of the suspension or removal of the underlying virtual financial asset. The VFA exchange operator shall make public its decision on the suspension or removal of the virtual financial asset and of any related derivatives and communicate the relevant decisions to the competent authority:

Provided that the term "derivatives" in this paragraph shall exclude the derivatives as referred to in points (4) to (10) of Section C of Annex I to MIFID.

(e) Paragraph (d) shall also apply when the suspension from trading of a virtual financial asset or derivatives thereof which relate or are referenced to that virtual financial asset is lifted.

(f) The notification procedure referred to in paragraph (d) shall also apply in the case where the decision to suspend or remove from trading a virtual financial asset or derivatives thereof which relate or are referenced to that virtual financial asset is taken by the competent authority.

(2) If the trading of any virtual financial asset is suspended under sub-article (1) such virtual financial asset may still be treated as being traded on a VFA exchange for such purposes as may be set out in Rules issued under this Act.

(3) If the competent authority discontinues or suspends the trading of any virtual financial assets, the issuer shall have a right of appeal to the Tribunal in terms of article 51.

(4) This article shall also be applicable where a virtual financial asset is determined by the competent authority to be electronic money or a financial instrument in terms of article 13(2)(b).

45. (1) If the competent authority -

(a) proposes to discontinue or suspend the trading of a virtual financial asset on a VFA exchange; or

(b) decides to suspend the trading of a virtual financial asset on a VFA exchange with immediate effect,

Notice of
discontinuation
or suspension.

it must give the issuer of such virtual financial asset notice in writing:

Provided that a notice under this sub-article shall not be required when a virtual financial asset has been admitted to trading irrespective of the issuer's will.

(2) The discontinuance or suspension of the trading of a virtual financial asset shall take effect immediately or on such date as may be specified in the notice under sub-article (1).

(3) A notice given under sub-article (1) shall -

(a) give details of the discontinuance or suspension;

(b) state the competent authority's reason for the

discontinuance or suspension, provided that the interest of a VFA exchange or the interest of the public or the investors shall constitute sufficient reason;

(c) inform the issuer of a virtual financial asset that he may make representations to the competent authority within such period as may be specified in the notice; and

(d) inform the issuer of the date on which the discontinuance or suspension will take effect or of the date on which the suspension took effect if the notice under sub-article (1) states that suspension is to take place with immediate effect:

Provided that the obligation to give notice of a decision to suspend the trading of a virtual financial asset and the right of the issuer to make representations in relation thereto shall be without prejudice to the power of the competent authority to suspend the trading of any virtual financial assets with immediate effect.

(4) The competent authority may extend the period within which representations may be made to it.

(5) If having considered any representations made by the issuer of a virtual financial asset the competent authority decides -

(a) to discontinue or suspend the trading of a virtual financial asset; or

(b) if the suspension has taken effect, not to cancel it,

the competent authority shall give the issuer of a virtual financial asset notice in writing of its decision.

(6) If the competent authority decides to discontinue or suspend the trading of a virtual financial asset, or if the suspension has taken effect, not to cancel it, the issuer of the virtual financial asset concerned shall have a right of appeal to the Tribunal and a notice given under sub-article (5) shall inform the issuer of his right to refer the matter to the Tribunal.

(7) The effect of cancelling a discontinuance is that the virtual financial asset concerned are to be re-admitted to trading on the VFA exchange on which they had been admitted to trading.

(8) The provisions of this article shall also be applicable where a virtual financial asset is determined by the competent authority to be electronic money or a financial instrument in terms of article 13(2)(b).

46. (1) Without prejudice to the provisions of article 45, the competent authority shall have the power to suspend temporarily the trading in a virtual financial asset on any VFA exchange, if in its opinion, the orderly transaction of business is being prevented, or is likely to be prevented.

Temporary suspension of trading on a VFA exchange.

(2) The Minister may recommend to the competent authority the temporary suspension of trading if he is of the opinion that the orderly transaction of business of a VFA exchange is being disrupted because of any occurrence which in the opinion of the Minister merits such closure.

(3) The competent authority may order that, for such time as it may determine, no trading of any kind may be transacted in one or more specified virtual financial assets if it has reason to believe that this would be in the interest of the VFA exchange concerned, the public or investors in general.

(4) No transaction may be executed at any time in the event of the temporary suspension of trading under this article. Any transaction so executed in contravention of this sub-article shall be invalid.

(5) This article shall also be applicable where a virtual financial asset is determined by the competent authority to be electronic money or a financial instrument in terms of article 13(2)(b).

47. Without any 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:

Power of the competent authority to introduce test.

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.

48. (1) Without prejudice to any other powers assigned to the competent authority in terms of this Act, where a licence holder or the secretary, a member of the board of administration or any other person responsible for a licence holder contravenes or fails to comply with any of the conditions imposed in a licence, and, or where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act, regulations made or Rules issued thereunder, including failure to cooperate in an investigation, the competent authority may by notice in writing and without

Administrative penalties and other measures.

C 822

recourse to a court hearing impose on the licence holder, secretary, member of the board of administration and, or any other person as the case may be, an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be:

Provided that the provisions of this sub-article shall apply to issuers and VFA agents *mutatis mutandis*.

(2) Administrative penalties or other measures that may be imposed by the competent authority on issuers, VFA agents, licence holders or others, as may be specified, may be imposed in the form of a fixed penalty, a daily penalty, or both.

(3) The imposition by the competent authority of an administrative penalty in terms of this article shall be without prejudice to any other consequence of the act or omission of the offender under civil or criminal law:

Provided that in all cases where the competent authority imposes an administrative penalty in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

(4) The competent authority may, by means of a public statement, disclose the name of the person sanctioned, the particular breach of the provision of this Act, regulations made or Rules issued thereunder, and the penalty or administrative measure imposed. The competent authority shall withhold such public disclosure where it deems that such disclosure would seriously jeopardise the financial markets, be detrimental to the interests of investors or consumers or cause disproportionate damage to the parties involved.

Obligation to state grounds for decisions.

49. Any decision taken under this Act by the competent authority, including any Rules issued or regulations made thereunder, shall state the grounds on which such a decision has been based.

PART VIII

Duty of Auditors

Auditor's duty to report.

50. (1) A licence holder shall appoint an auditor who shall have the duty to report immediately to the competent authority any fact or decision of which he becomes aware in his capacity as auditor of such licence holder which -

(a) is likely to lead to a serious qualification or refusal

of the auditor's report on the accounts of such licence holder; or

(b) constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to the licence holders in or under this Act; or

(c) gravely impairs the licence holder's ability to continue as a going concern; or

(d) relates to any other matter which may be prescribed.

(2) An auditor of a licence holder shall report to the competent authority any facts or decision as specified in sub-article (1) of any person having close links with such licence holder within the meaning in article 17, of which he becomes aware in his capacity as auditor of the licence holder or of the person having such close links.

(3) No duty (including the duty of professional secrecy) to which an auditor of the licence holder may be subject, shall be regarded as contravened by reason of his communicating in good faith to the competent authority, whether or not in response to a request from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that licence holder and which is relevant to any functions of the competent authority under the provisions of this Act or is required to be communicated by virtue of sub-article (1).

(4) The matters prescribed for the purposes of sub-article (1)(d) may include matters related to persons other than the licence holder.

(5) An auditor of a licence holder shall, in the absence of compelling reasons not to do so, simultaneously report the information specified in sub-articles (1) and (2), in accordance with the provisions of sub-articles (3) and (4), to the board of administration of the licence holder.

(6) An auditor of a licence holder shall report annually to the competent authority on the licence holder's systems and security access protocols in the manner and format required by the competent authority.

(7) The provisions of this article shall apply to issuers and VFA agents *mutatis mutandis*.

PART IX

Appeals, Remedies, Sanctions and Confidentiality

C 824

Appeals.

51. (1) Subject to the provisions of this article and without prejudice to any other article under this Act, an appeal shall lie to the Tribunal with respect to:

- (a) any decision under article 12(c) and (d);
- (b) any notice in terms of article 13(2);
- (c) any administrative penalty imposed under article 48;
- (d) any refusal, variation, cancellation or suspension of a licence under article 22(3);
- (e) any notice issued or any order made in terms of articles 28, 44 and 45;
- (f) any decision concerning an advertisement under articles 6 or 29;
- (g) any punishment or penalty imposed under article 38(5);
- (h) any directive given under article 41; or
- (i) any measure taken in terms of article 42(1), (2) and (4).

Cap. 330.

(2) The provisions of article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandis* to appeals that may be brought before the Tribunal under this article.

Powers of the court in the case of a likely contravention.

52. (1) If, on an application by the competent authority made to the court, such court is satisfied -

- (a) that there is reasonable likelihood that a person will contravene any of the provisions of this Act or of any regulations made or Rules issued thereunder, or will contravene or fail to comply with any condition, obligation, requirement, Rules, directive, or order made or given under any of the provisions of this Act; or
- (b) that a person has contravened any such provision or has contravened or failed to comply with any such condition, obligation, requirement, Rules, directive, or order and that steps could be taken to remedy the contravention or failure,

the court may give such orders as it may deem appropriate to restrain the contravention or, as the case may be, to require the person referred to in paragraph (a) or (b), or any other person who appears to the

court to have been knowingly concerned in the contravention, to take such steps as the court may direct.

(2) If, on an application made under sub-article (1), the court is satisfied that a person has entered into any transaction in contravention of any of the provisions of this Act, the court may order that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the transaction was entered into.

(3) If, on an application made under sub-article (1), the court is further satisfied that -

(a) profits have accrued to any person as a result of the contravention; or

(b) an investor has suffered loss or been otherwise adversely affected as a result of that contravention,

the court may order the person responsible for the contravention to pay into court such sum as appears to it to be just having regard to the extent of the profit, loss or adverse effect as aforesaid, and order such sum to be paid out as the court may direct to the persons who have entered into transactions as a result of which profits have accrued or losses or adverse effects have been suffered as aforesaid.

(4) For the purposes of this article the court may order the production by any person of such accounts and the provision of such information, and verified in such manner, as the court may deem appropriate.

(5) The provisions of this article shall be without prejudice to any right of any aggrieved person to bring proceedings directly in respect of any right such person may otherwise have independently of the competent authority.

53. (1) Without prejudice to any other article under this Act, any person who contravenes or fails to comply with any of the provisions of articles 3, 7, 13, 25, 26, 28, 39, 41 or 57 or of article 39 as applied by article 40 or of any court order made under article 52 or of any regulations made under article 38 shall be guilty of an offence. Offences.

(2) Any person who for the purposes of, or pursuant to, any of the provisions of this Act or of any regulations made thereunder, or any condition, obligation, requirement, directive or order made or given as aforesaid, furnishes information or makes a statement which he knows to be inaccurate, false or misleading in any material respect,

or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect, shall be guilty of an offence.

(3) Any person who is knowingly a party to the carrying on of any activity regulated under this Act, or any regulations made or Rules issued thereunder, with a fraudulent intent or for a fraudulent purpose, shall be guilty of an offence.

(4) Any person who by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (whether dishonest or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into a VFA agreement, shall be guilty of an offence.

(5) Any person who with intent to avoid detection of the commission of an offence under this Act removes, destroys, conceals or fraudulently alters any book, document or other paper or record, either tangible or intangible, shall be guilty of an offence.

(6) Any person who intentionally obstructs a person from exercising rights conferred by this Act shall be guilty of an offence.

Penalties.

54. A person guilty of an offence under the provisions of article 53 shall be liable on conviction to a fine (*multa*) of up to fifteen million euro (€15,000,000) or up to three times the profits made or losses avoided by virtue of the offence, whichever is the greater, or to imprisonment for a term not exceeding six years, or both such fine and imprisonment, unless such fine or term of imprisonment is otherwise imposed under article 38(5).

Sanctions on members of the body of administration of the legal entity.

55. Where obligations imposed in terms of the Act or any regulations made or Rules issued thereunder apply to the issuer, VFA agent, licence holder or to any other legal entity, in the event of a breach, sanctions can also be applied, subject to the conditions laid down in national law, to the members of the body of administration of the legal entity concerned, and to other individuals who are responsible for the breach under national law.

Public statement as to person's misconduct.

56. (1) If it appears to the competent authority that a person who holds or who held a licence, or any other person, has contravened any of the provisions of this Act or of any regulations made under this Act or has contravened or failed to comply with any condition, obligation, requirement, Rules, directive or order made or given under any of the provisions of this Act, the competent authority may publish a statement to that effect.

(2) Nothing in this article shall restrict or otherwise prejudice the powers of the competent authority under article 41(4).

57. (1) Information obtained by the competent authority or by its officers, employees or agents, as well as by auditors, inspectors or any other persons engaged by the competent authority for the purposes of, or pursuant to, any of the provisions of this Act, or of any regulations made or Rules issued thereunder, or in the discharge of any functions under any of the said provisions, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any other person, except in the following cases: Confidentiality.

(a) where the disclosure is required for the detection, prevention or prosecution of criminal offences under the criminal provisions of this Act or any other law;

(b) where the information is disclosed with a view to the institution of, or otherwise for the purposes of any proceedings by the competent authority before any court under this Act;

(c) where the information is disclosed in civil or commercial proceedings in relation to the bankruptcy or dissolution and consequential winding up by the court of an issuer, VFA agent or licence holder, provided such information does not concern third parties and is necessary for the carrying out of the proceedings, or is disclosed to an overseas body responsible for the liquidation and bankruptcy of a person holding a licence or an equivalent authorisation from a European regulatory authority or an overseas regulatory authority;

(d) where a summary or collection of the information is prepared or supplied in such a way as not to enable the identity of any persons, to whom the information relates to be ascertained;

(e) where the information is disclosed to an auditor where such disclosure would assist it in the exercise of his functions under article 50;

(f) where the information is provided to the Central Bank of Malta or to the Listing Authority under the Financial Markets Act in the exercise of their respective functions in terms of law; Cap. 345.

(g) where the information is provided to such other local or European or overseas regulatory, judicial or

C 828

enforcement authorities in the pursuance of serious concerns of a regulatory or criminal nature:

Provided that the provisions of this article shall not prevent the competent authority from exchanging or transmitting confidential information belonging to issuers or licence holders to ESAs or the ESRB:

Provided further that the provisions of this article shall not prevent the competent authority from using such information for other purposes where the body or person communicating information to the competent authority consents thereto.

(2) The provisions of this article shall not preclude the competent authority from transmitting to the Central Bank of Malta, the ESCB and the ECB, in their capacity as monetary authorities, and, where appropriate, to recognised clearing houses or other similar body performing clearing or settlement services, and to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their functions. Likewise, the competent authority shall be entitled to the receipt of such information as it may require for the purpose of performing its functions under the Act.

(3) Where an officer or an employee of an issuer, VFA agent or licence holder has reason to believe that a transaction or a proposed transaction could involve money laundering or the funding of terrorism, he shall act in compliance with the reporting and other obligations set out in the regulations made under article 12 of the Prevention of Money Laundering Act and any procedures and guidance issued thereunder, and such disclosure shall not constitute a breach of confidentiality.

Cap. 373.

PART X

Miscellaneous Provisions

Exclusion of liability.

58. (1) The competent authority, including the members of the board of administration when acting in any function assigned to the board under any provision of this Act, any body including any council or committee established by this Act and any member, officer or employee of that body, the officers and employees of the competent authority and any other person appointed to perform a function under this Act, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any such function or otherwise in the exercise of their official duties, unless the act or omission is shown to have been done or omitted to be done, as the case may be, through wilful misconduct.

(2) For the purposes of this provision "this Act" shall include any other Act administered by the competent authority and any regulations made or Rules issued thereunder.

59. A notice or other document to be given or served under this Act, or any Rules issued or regulations made thereunder, shall be deemed to have been duly given or served on a person if - Notices, etc.

(a) it has been delivered to it; or

(b) it has been left at the address furnished by it to the competent authority, or to his last known address; or

(c) if it has been sent to it by post or by telefax at any of the aforesaid addresses; or

(d) in the case of a body of persons, whether corporate or unincorporate, if it has been given or served in any of the manners aforesaid to or on a secretary, clerk, manager or their equivalent, or to any member of the board of administration or an appointed representative.

60. Where a licence holder wishes to carry on the respective activities in a Member State or EEA State, in exercise of a European right, such right shall be subject to - European right.

(a) a prior notification to the competent authority in accordance with regulations made and Rules issued under this Act; and

(b) the laws of that Member State or EEA State.

61. The competent authority shall cooperate with the ESAs and other European, overseas and national regulatory authorities whenever necessary and in accordance with any applicable European or Maltese law or Malta's international commitments, as the case may be. Co-operation with ESAs and other European, overseas and national regulatory authorities.

PART XI

Transitory Provisions

62. (1) Any person who, on the date of the coming into force of this Act - Transitory provisions.

(a) is undertaking an activity in terms of article 3 shall, within six months from the date of coming into force of this Act, draw up a whitepaper and register it with the competent authority in terms of the said article;

C 830

(b) is providing the services of a VFA agent within the meaning of 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;

(c) is providing a VFA service within the meaning of this Act shall, within twelve months from the date of coming into force of this Act, apply to the competent authority for licence in terms of article 14.

(2) A person under sub-article (1) may continue to undertake such activity or provide such service or services in or from within Malta until the whitepaper has been registered with, or the application has been determined by, the competent authority and, in so doing, is not to be regarded as carrying on such activity or providing such service in contravention of this Act.

FIRST SCHEDULE

(Article 2)

Matters to be specified in a whitepaper of an issuer and requirements for its approval and publication

General principles

1. The whitepaper shall contain the information which, according to the particular nature of the issuer and of the virtual financial assets offered to the public, is necessary to enable investors to make an informed assessment of the prospects of the issuer, the proposed project and of the features of the virtual financial asset. This information shall be presented in an easily analysable and comprehensible form.

2. Certain information specified in this Schedule may be omitted from the whitepaper if:

(a) disclosure of such information would be contrary to the public interest;

(b) disclosure of such information would be seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the prospects of the issuer, the proposed project and of the features of the virtual financial assets to which the whitepaper relates;

(c) such information is of minor importance only for a specific offer and is not information that will influence an informed assessment of the prospects of the issuer, the proposed project and of the features of the virtual financial assets to which the whitepaper relates; or

(d) disclosure of such information is found to be inappropriate to the issuer's sphere of activity or proposed activity, as the case may be, or its legal form or to the virtual financial assets being offered, in which case the whitepaper shall contain equivalent information when available.

3. The whitepaper shall be drafted in the English language and any or no additional languages, at the issuer's discretion.

Summary

4. (1) The whitepaper shall include a summary. The summary shall, in brief and non-technical language, provide key information in relation to the offering. The format and content of the summary of the whitepaper shall provide, in conjunction with the whitepaper, appropriate information about essential elements of the virtual financial assets concerned in order to aid investors when

C 832

considering whether to invest in such virtual financial assets. The summary shall be drawn up in a common format in order to facilitate comparability of the summaries of similar virtual financial assets and its content should convey the key information of the virtual financial assets concerned in order to aid investors when considering whether to invest in such virtual financial assets. The summary shall also include a warning that:

(a) it should be read as an introduction to the whitepaper;

(b) any decision to invest in the virtual financial assets should be based on consideration of the whitepaper as a whole by the investor;

(c) the offering of virtual financial assets does not constitute an offer or solicitation to sell financial instruments and that any such offer or solicitation of financial instruments will be made only by means of a prospectus or other offering documentation in terms of any applicable Maltese law;

(d) without prejudice to article 10 of this Act, civil liability attaches to those persons who have tabled the summary including any translation thereof, and applied for its notification.

(2) For the purposes of this paragraph "key information" means essential and appropriately structured information which is to be provided to investors with a view to enabling them to understand the nature and the risks of the proposed project, the issuer and the virtual financial assets that are being offered to them.

Specific matters to be included

5. Paragraphs 6 to 13 of this Schedule contain the specific matters to be included in a whitepaper.

The persons responsible for the whitepaper

6. Names, functions and declarations by the persons responsible for the whitepaper that to the best of their knowledge the information contained in the whitepaper is in accordance with the facts and that the whitepaper makes no omission likely to affect its import.

The offer to the public

7. At least, and to the extent it is applicable, the following information on the offer shall be provided in the whitepaper:

(a) description of the reason behind the initial virtual financial asset offering;

(b) detailed technical description of the protocol, platform and, or

application, as the case may be, and the associated benefits;

(c) detailed description of the sustainability and scalability of the proposed project;

(d) associated challenges and risks as well as mitigating measures thereof;

(e) detailed description of the characteristics and functionality of the virtual financial assets being offered;

(f) detailed description of the issuer, VFA agent, development team, advisors and any other service providers that may be deployed for the realisation of the project;

(g) detailed description of the issuer's wallet/s used;

(h) description of the security safeguards against cyber threats to the underlying protocol, to any off-chain activities and to any wallets used by the issuer;

(i) detailed description of the life cycle of the initial virtual financial asset offering and the proposed project;

(j) detailed description of the past and future milestones and project financing;

(k) detailed description of the targeted investor base;

(l) exchange rate of the virtual financial assets;

(m) description of the underlying protocol's interoperability with other protocols;

(n) description of the manner funds raised through the initial virtual financial asset offering will be allocated;

(o) the amount and purpose of the issue;

(p) the total number of virtual financial assets to be issued and their features;

(q) the distribution of virtual financial assets;

(r) the consensus algorithm, where applicable;

(s) incentive mechanism to secure any transactions, transaction and/or any other applicable fees;

C 834

- (t) in the case of a new protocol, the estimated speed of transactions;
- (u) any applicable taxes;
- (v) any set soft cap and hard cap for the offering;
- (w) the period during which the offer is open;
- (x) any person underwriting or guaranteeing the offer;
- (y) any restrictions on the free transferability of the virtual financial assets being offered and the DLT exchange/s on which they may be traded, to the extent known by the issuer;
- (z) methods of payment;
- (aa) specific notice that investors participating in the initial virtual financial asset offering will be able to get their contribution back if the soft cap is not reached at the end of the offering and detailed description of the refund mechanism, including the expected time-line of when such refund will be completed;
- (ab) detailed description of the risks associated with the virtual financial assets and the investment therein;
- (ac) the procedure for the exercise of any right of pre-emption;
- (ad) detailed description of the smart contract/s, if any, deployed including *inter alia* the adopted standards, its/their underlying protocol/s, functionality/-ies and associated operational costs;
- (ae) if any smart contract/s is/are deployed by the issuer, details of the auditor who performed an audit on it/them;
- (af) description of any restrictions embedded in the smart contract/s deployed, if any, including *inter alia* any investment and/or geographical restrictions;
- (ag) the program agents used to obtain data and verify occurrences from smart contracts (also known as ‘oracles’) used and detailed description of their characteristics and functionality thereof;
- (ah) bonuses applicable to early investors including *inter alia* discounted purchase price for virtual financial assets;
- (ai) the period during which voluntary withdrawals are permitted by the smart contract, if any;

(aj) description of the issuer's adopted white-listing and anti-money laundering and counter financing of terrorism procedures in terms of the Prevention of Money Laundering Act and any regulations made and rules issued thereunder;

(ak) intellectual property rights associated with the offering and protection thereof; and

(al) the methods of and time-limits for delivery of the virtual financial assets:

Provided that the competent authority shall have the power to waive or modify any of the above requirements within the context of a particular initial VFA offering or a particular application for admission to trading on a DLT exchange, as the case may be.

Details of the issuer

8. The following details of the issuer:

- Name;
- Registered address and registration number;
- Date of registration;
- The issuer's object(s);
- Where applicable, the group of undertakings to which the issuer belongs;
- Insofar as they are known, indication of the members who directly or indirectly exercise or could exercise a determining role in the issuer's administration.

The issuer's principal activities

9. Description of the issuer's principal activities including the disclosure of any legal proceedings having an important effect on the issuer's financial position.

The issuer's board of administration

10. Names, addresses and functions of administrators.

Benefits for third parties and other expenditure

11. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the

C 836

amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

12. Any amount or benefit intended to be paid or given to the VFA agent or any person endorsing the offering, and the consideration for the payment or the giving of the benefit.

Issuer's financial track record

13. Where the issuer has been established for a period exceeding three years, details of its financial track record.

Validity of a Whitepaper, Arrangements for Approval and Publication of a Whitepaper

14. A whitepaper shall be valid for 6 months after its approval by the competent authority for offers to the public.

15. (1) The competent authority shall not register a whitepaper unless it is satisfied that the whitepaper has been drawn up in accordance with the provisions of this Act, this Schedule and any regulations, Rules or guidance made or issued thereunder.

(2) The competent authority shall notify the issuer or the VFA agent, as the case may be, of its decision regarding the approval or otherwise of the whitepaper.

Significant new factors, material mistakes or inaccuracies

16. (1) Every significant new factor, material mistake or inaccuracy relating to the information included in the whitepaper which is capable of affecting the assessment of the virtual financial assets and which arises or is noted between the time when the whitepaper is approved and the final closing of the offer to the public, whichever occurs later, shall be mentioned in a supplement appended to the whitepaper. Such a supplement shall be approved in the same way and published in accordance with at least the same arrangements as were applied when the original whitepaper was published. The summary, and any translations thereof, shall also be supplemented, if necessary, to take into account the new information included in the supplement.

(2) Investors who have already agreed to purchase or subscribe for the virtual financial assets before the supplement is published shall have the right to withdraw their acceptance within two working days after the publication of the supplement, provided that the new factor, mistake or inaccuracy referred to in paragraph (1) arose before the final closing of the offer to the public and the delivery of the virtual financial assets. That period may be extended by the issuer in which case the smart contract, if any, shall be updated accordingly. The final date of the right of withdrawal shall be stated in the supplement.

SECOND SCHEDULE

(Article 2)

VFA services

1. Reception and Transmission of Orders

The reception from a person of an order to buy, sell or subscribe for virtual financial assets and the transmission of that order to a third party for execution.

2. Execution of orders on behalf of other persons

Acting to conclude agreements to buy, sell or subscribe for one or more virtual financial assets on behalf of other persons.

3. Dealing on own account

Trading against proprietary capital resulting in conclusion of transactions in one or more virtual financial assets.

4. Portfolio Management

Managing or agreeing to manage assets belonging to another person if those assets consist of or include one or more virtual financial assets or the arrangements for their management are such that the person managing or agreeing to manage those assets has a discretion to invest any of those assets in one or more virtual financial assets:

Provided that for the purposes of this paragraph, the term "assets" shall exclude any financial instrument, and whether or not issued in Malta.

5. Custodian or Nominee Services

(a) Acting as custodian or nominee holder of a virtual financial asset and, or private cryptographic key; or

(b) Holding a virtual financial asset and, or private cryptographic key as nominee, where the person acting as nominee is so doing on behalf of another person who is providing any VFA service under this Schedule or on behalf of a client of such person, and such nominee holding is carried out in relation to such service.

6. Investment Advice

Giving, offering or agreeing to give, to persons in their capacity as investors or potential investors or as agent for an investor or potential investor, a personal recommendation in respect of one or more transactions relating to one or more

C 838

virtual financial assets.

For the purposes of this paragraph, a "personal recommendation" shall mean a recommendation presented as suitable for the person to whom it is addressed, or which is based on a consideration of the circumstances of that person, and must constitute a recommendation to take one of the following steps:

(a) to buy, sell, subscribe for, exchange, redeem or hold a particular virtual financial asset;

(b) to exercise or not to exercise any right conferred by a particular virtual financial asset to buy, sell, subscribe for, exchange, or redeem it.

A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public.

7. Placing of virtual financial assets

The marketing of newly-issued virtual financial assets or of virtual financial assets which are already in issue but not admitted to trading on a DLT exchange, to specified persons and which does not involve an offer to the public or to existing holders of the issuer's virtual financial assets.

8. The operation of a VFA exchange.

Objects and Reasons

The objects of this Bill are to regulate the field of Initial Virtual Financial Asset Offerings and Virtual Financial Assets and to make provision for other matters ancillary or incidental thereto or connected therewith.

