



The Virtual Financial Assets Bill - Regulating the Future Economy

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In a space that is currently unregulated and lacking certainty for operators and investors, the Maltese Government has issued the long-awaited bill regulating cryptocurrencies and crypto exchanges.

The Regulation of VFAs and VFA Services

The proposed law which was tabled before parliament last week proposes to regulate cryptocurrencies, termed Virtual Financial Assets (VFA) and related VFA services. The concept of a VFA under Maltese law will refer to any form of digital medium recordation used as a digital medium of exchange, unit of account or store of value that excludes electronic money, financial instruments and virtual tokens. This is intended to distinguish the concept of coins such as the popular Bitcoin, Ether and Litecoin amongst others, from other virtual assets that have no utility, value or application outside a limited platform and which cannot be exchanged for funds.

In a recently issued consultation paper, the MFSA is proposing a financial instrument test to determine whether a VFA would be considered as a financial instrument and thus falling under current financial services legislation, a virtual token which falls outside the scope of the proposed law or a VFA falling under this proposed Act.

The provision of VFA services is also regulated under this new Bill. The proposed rules will cover brokers, wallet providers, asset managers, investment advisors and market makers offering services related to cryptocurrencies. These activities will be subject to a licence to be issued by the MFSA as the competent regulatory authority.

Crypto-exchanges, referred to as VFA exchanges, have also been classified as a VFA service and are thus deemed to be a licensable activity. This will therefore regulate those exchanges converting fiat money (such as the Euro, USD, GBP etc) to cryptocurrencies (such as Bitcoin) and vice-versa, as well as those exchanges converting one type of cryptocurrency to another.

Initial VFA Offerings

One primary element of the proposed law is the regulation of ICOs which are termed in the bill as Initial Virtual Financial Asset Offerings. The lack of regulation worldwide has allowed the market



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to be infiltrated by fraudulent platforms allowing seemingly legitimate entrepreneurs seeking crowdfunding to accumulate millions of investor funds only to then disappear with that money and leaving bona fide investors in the dark.

As the cryptocurrency frenzy took the world by storm and Bitcoin reached unprecedented prices late last year, this brought with it an advent of unassuming investors placing their money not only on the value of cryptocurrencies but also by funding ICOs. The Dogecoin, which is a cryptocurrency featuring the Shiba Inu dog from the "Doge" Internet meme as its logo started off as a "joke currency" in 2013 but went on to reach a \$1 billion market cap in January this year.

More than \$5 billion were reported to have been raised in ICOs last year; more than 10% of these funds were deemed to have been lost or stolen in hacker attacks. Furthermore, Tokendata has estimated that 46% of last year's ICOs have already failed. Numerous media outlets claim that it comes as no surprise that many of these ICOs were doomed to fail. This news may still have come as a shock to all those investors who cumulatively invested millions into these hopeful ventures only to then find that their investment was not secured as much as they assumed it would be.

The need for regulation and investor protection is therefore paramount. The proposed law outlines the requirements when offering VFAs to the public, including obligations when presenting advertisements and ensuing liability should any statements used be misleading, inaccurate or inconsistent.

The bill also outlines the information which must be included in a Whitepaper, which is a document presented upon an issue of VFAs to the public explaining the purpose behind an ICO, how funds collected will be used and who are the people behind the entity seeking funding. The aim of the Whitepaper is thus to offer clarity to potential investors on the proposed project, while instilling trust and legitimacy in the minds of investors to fund it.

It remains to be seen whether the MFSA will impose any limits on the type and amount of investment in Initial VFA Offerings and VFA Services. In its Discussion Paper, the authority had suggested that it may limit certain investment in cryptocurrencies to professional investors only. This would inevitably impact cryptocurrencies and crypto-enthusiasts negatively and would stifle the crypto-funding investment pool for what essentially remains a platform for start-ups.

The VFA bill is one part of the proposed framework which envisages the creation of a Digital Innovation Authority, the voluntary registration of Innovative Technology Service Providers and the certification of DLT Platforms and related smart contracts categorised as Innovative Technology Arrangements.



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These are exciting times for Malta as we are embracing the proliferation of new and emerging technologies to turn the island into a hub for digital technology innovation. The next step is for the authorities and service providers, on all levels, to adopt a pragmatic and not overly prescriptive approach to enable, and not stifle, technological innovation.

For more information on ICOs, Virtual Financial Assets, Blockchain, Smart Contracts and related areas please contact us by sending an email at agtg@afilexion.com

Disclaimer: This article is not intended to impart legal advice and readers are asked to seek verification of statements made before acting on them.



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