

SUBSIDIARY LEGISLATION 590.01**VIRTUAL FINANCIAL ASSETS REGULATIONS***

1st November, 2018

LEGAL NOTICE 357 of 2018, as amended by Legal Notice 25 and 332 of 2022 and 134 and 296 of 2024.

**Part I
Preliminary**

1. The title of these regulations is the Virtual Financial Assets Regulations. Title.
2. (1) In these regulations, unless the context otherwise requires – Interpretation.
- "the Act" means the Virtual Financial Assets Act; Cap. 590.
- "assets" means movable and immovable property of any kind and excludes financial instruments as defined in the Second Schedule to the Investment Services Act, whether issued in Malta or not; Cap. 370.
- "collective investment scheme" shall have the same meaning assigned to it under the Investment Services Act; Cap. 370.
- "competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act; Cap. 330.
- "control of assets" means the holding or control of assets belonging to, or on behalf of a client, by a subject person acting in the course of rendering a VFA service under the Act, and includes custody of assets:
- Provided that, for the purposes of these regulations, the terms "hold", "control", "place", "safeguard" and "deposit" shall be deemed to encompass custody services provided in relation to virtual financial assets, and shall extend to any physical or digital representation of such assets or to a right to transact such assets or any physical or electronic device, keys, codes or any other information which gives the custodian control or access to such virtual financial assets, including private cryptographic keys belonging to the client;
- "client" means any natural or legal person to whom a VFA service is provided, and shall include any person whose assets are held under the control of a subject person;
- "credit institution" shall have the same meaning assigned to it under the Banking Act; Cap. 371.
- "custodian" means a licence holder in possession of a Category 4a or 4b investment services licence, as the context requires, issued in terms of the Investment Services Act; Cap. 370.
- "Directive 2013/36/EU" means Directive 2013/36/EU of the

*These Regulations have been repealed by Legal Notice 296 of 2024.

European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, as amended from time to time and includes any implementing measures that have been or may be issued thereunder;

Cap. 370. "electronic money institution" shall have the same meaning as assigned to it under the Financial Institutions Act;

"market maker" means a person who holds himself out, on a continuous basis, as being willing to deal on own account by buying and selling virtual financial assets against that person's proprietary capital at prices defined by that person;

"money market fund" means a money market fund authorised under Regulation (EU) 2017/1131;

Cap. 376. "payment institution" shall have the same meaning assigned to it under the Financial Institutions Act;

"Regulation (EU) 2017/1131" means Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds;

"revenue" means the net revenue which shall be calculated in the following manner: the gross revenue indicated in the annual audited financial statements and that is derived from activities for which a licence was issued in terms of article 13 of the Act, less any commissions, where applicable, that are directly related to the acquisition of the said gross revenue, paid or payable to third parties;

"subject person" means a person who is in possession of a licence under the Act or is acting under an exemption from the requirement of such a licence in terms of these regulations;

"third country" means a country which is not a Member State or an EEA State;

"written consent" means any freely given, specific, informed and unambiguous consent that is clearly evidenced in writing and affirmatively executed by signature or equivalent means of irrevocable and duly recorded, including by digital means, expression of consent.

(2) Words and expressions used in these regulations which are also used in the Act but which are not defined herein shall have the same meaning as in the Act.

Part II Exemptions

Exemption from drawing up and registering a whitepaper.

3. The provisions of article 3 of the Act shall not apply to any person who has commenced an offering in terms of article 3 prior to two weeks of the coming into force of the Act:

Provided that the exemption laid down in this regulation shall only apply to those persons whose offering will continue until not later than the 31 January 2019:

Provided further that persons whose offering will continue after the 31st January 2019, shall, by not later than the said date, draw up a whitepaper and register it with the competent authority in terms of article 3 of the Act.

4. (1) The following persons are hereby being exempted for the purposes of the requirement for a licence for VFA services in terms of article 13 of the Act:

Exemption from
licensing.
Amended by:
L.N. 25 of 2022;
L.N. 332 of 2022.

(a) the Central Bank of Malta and the members of the European System of Central Banks (ESCB) and other national bodies performing similar functions in the European Union, other public bodies charged with or intervening in the management of the public debt in the European Union and international financial institutions established by two or more Member States which have the purpose of mobilizing funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems;

(b) the competent authority and any person who is appointed thereby in the course and for the purpose of its regulatory and supervisory functions;

(c) a liquidator or a curator in bankruptcy acting in the course of the liquidation or bankruptcy;

(d) persons dealing on own account in terms of the Act and not providing any other VFA services or performing any other activities in virtual financial assets unless such persons:

(i) are market makers; or

(ii) deal on own account when executing client orders:

Provided that persons exempt under paragraphs (f), (g) and (n) are not required to meet the conditions laid down in this point in order to be exempt:

Provided further that for the purposes of this exemption, dealing on own account shall mean the trading by a person in his own name and against proprietary capital resulting in conclusion of transactions in one or more virtual financial assets.

(e) persons who provide VFA services exclusively for their parent companies, for their subsidiaries or for other subsidiaries of their parent undertakings;

(f) a person licensed in terms of paragraph 5(c) of the

First Schedule to the Investment Services Act to act as custodian in relation to a collective investment scheme or holding an equivalent authorisation issued by a European regulatory authority providing services in Malta in exercise of a European right:

Provided that such person shall solely be exempt from the provisions of the Act for the purposes of providing the VFA service listed in paragraph 5 of the Second Schedule to the Act to a collective investment scheme;

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(g) A person licensed to provide the services of management of investments in terms of paragraph (4) of the First Schedule to the Investment Services Act to a collective investment scheme or holding an equivalent authorisation issued by a European regulatory authority providing services in Malta in exercise of a European right:

Provided that such person shall solely be exempt from the provisions of the Act for the purposes of providing the VFA services listed in paragraphs 4 and, or 6 of the Second Schedule to the Act to a collective investment scheme;

(h) a person, being an individual, who manages assets, in terms of paragraph 4 of the Second Schedule to the Act, in relation to a portfolio which includes virtual financial assets, for his spouse, descendants and ascendants in the direct line and their relative spouses, or his brothers and sisters, as long as such portfolio is owned by the person to whom such services are provided and does not constitute a collective investment scheme, and as long as the person providing the service does not do any of the following:

(i) receive, directly or indirectly, any remuneration or other benefit for the service;

(ii) hold himself out as providing a VFA service; or

(iii) solicit members of the public to take such services;

(i) a person who acts as manager, in terms of paragraph 4 of the Second Schedule to the Act, of a portfolio which includes virtual financial assets belonging to him and to no other person, as long as:

(i) such portfolio has not been established for investment purposes in the interest of other beneficiaries where such interest is legally enforceable; and

(ii) such portfolio does not constitute a

collective investment scheme;

(j) a person providing a VFA service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service:

Provided that for the purposes of this paragraph, a service shall be deemed to be provided in an incidental manner in the course of a professional activity if the person providing such a service does not:

(i) receive, directly or indirectly, any remuneration or other benefit for the service;

(ii) hold himself out as providing a VFA service; or

(iii) solicit members of the public to take such services;

(k) a person providing investment advice in terms of paragraph 6 of the Second Schedule to the Act, in the course of providing another professional activity not covered by the Act, provided that the provision of such advice is not specifically remunerated;

(l) supranational institutions, such as the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and bilateral development banks, the World Bank, the International Monetary Fund and other supranational institutions and similar international organisations, in the event that such institutions or organisations manage collective investment schemes and in so far as those collective schemes act in the public interest;

(m) securitisation special purpose entities;

(n) collective investment schemes licensed under the Investment Services Act or otherwise authorised by a European regulatory authority, providing services in Malta in exercise of a European right;

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(o) a person providing custodian or nominee services in terms of paragraph 5 of the Second Schedule to the Act who is authorised in terms of article 43(3) of the Trusts and Trustees Act to act as a trustee, provided that such person does not provide any other service in terms of the Second Schedule to the Act; and

Cap. 331

Cap. 621.

(p) the Asset Recovery Bureau in the course of and for the purpose of its functions as delineated in the Proceeds of Crime Act.

(2) The exemptions laid down in paragraphs (d), (e), (f), (g) and (o) of sub-regulation (1) shall not be automatically operative but their applicability shall be subject to the determination in writing by the competent authority:

Provided that the applicability of the exemption laid down in paragraph (o) shall not exempt such person from satisfying any regulations, rules or authorisation conditions issued by the Authority that such person must satisfy to carry out the service set out in paragraph 5 to the Second Schedule to the Act:

Provided further that the applicability of the exemption laid down in sub-regulation (1)(d) shall be automatically operative in the case of a natural person:

Provided further that any person who intends to benefit from the exemptions laid down under paragraphs (d) or (e) of sub-regulation (1) shall, when requesting a determination in writing from the competent authority, provide a written declaration to the competent authority which shall include a statement on the level of activity which that person plans to conduct, whether such person will be engaging employees to carry out such activity, the business model and the identification details and address of every ultimate beneficial owner:

Provided further that, following the determination in writing from the competent authority, any person benefiting from the exemptions laid down under paragraphs (d) or (e) of sub-regulation (1) shall submit to the competent authority a written declaration, at the end of each calendar year, which shall include the following information:

- (a) a statement on the level of activity carried out during the preceding year, which activity would have been licensable had that person not been exempt;
- (b) whether such person engages employees to carry out such activity and, if applicable, the number of employees engaged; and
- (c) a confirmation that, from the date on which such person obtained a determination in writing from the competent authority in terms of this sub-regulation, there were no changes to the business model and to the information provided to the competent authority on the ultimate beneficial owners.

5. The provisions of article 29 of the Act shall not apply to: Exemption from the requirement of article 29.
- (a) any advertisement issued or caused to be issued by:
- (i) the Government of Malta; or
 - (ii) the Central Bank of Malta; or
 - (iii) any international organization the members of which include Malta;
- (b) any advertisement issued or caused to be issued by any person who is under these regulations exempt from the requirement of a licence, provided that the advertisement strictly relates to matters in respect of which such person is exempt;
- (c) any advertisement issued or caused to be issued solely to:
- (i) licence holders; or
 - (ii) a person whose ordinary business involves the acquisition and disposal of virtual financial assets; or
 - (iii) a person who is acting under an exemption from the requirement of a licence under these regulations provided that the advertisement relates to matters in respect of which such person is exempt;
- (d) any advertisement contained in a publication published and circulated principally outside Malta, or in a sound or television broadcast transmitted principally for reception outside Malta, or any other communication using any other medium, originating outside Malta, unless the advertisement is directed to persons in Malta, or is otherwise intended to be made available to persons in Malta not being persons falling within the scope of paragraph (b) of this regulation:

Provided that the exemption described in this regulation shall not apply where the advertisement is issued, broadcast or transmitted by:

- (i) a licence holder; or
- (ii) a licence holder in exercise of a European right within the meaning of article 2, and subject to the provisions of article 60 of the Act.

Part III**Fees**

Payment of
whitepaper review
or application fee.

6. Any person shall, upon submission of a whitepaper for registration or upon submission of an application for the granting of a registration, a licence or any other kind of authorisation, irrespective of whether the whitepaper is registered or whether the application is eventually accepted or not, pay to the competent authority the respective fee as established in the Second Column of the Schedule.

Payment of annual
supervisory fee.
Substituted by:
L.N. 134 of 2024.

7. Licence holders shall, upon the submission of the annual audited financial statements, pay to the competent authority an annual supervisory fee as established in the Third Column of the Schedule:

Provided that the first annual supervisory fee shall be due immediately once a licence is granted and, where applicable, shall be equal to a proportion of the minimum fee. The first annual supervisory fee payable shall be proportionate to the period remaining between the date of the granting of the licence and the established date for the submission of the annual audited financial statements.

Licence
Classification.

8. (1) A person applying for a licence in terms of article 13 of the Act shall be classified at the discretion of the competent authority into one of the four categories which determine the requirements of licence holders as follows:

VFAA Class 1 Licence holders authorised to receive and transmit orders and/ or provide investment advice in relation to one or more virtual financial assets and/ or the placing of virtual financial assets. Class 1 Licence Holders are not authorised to hold or control clients' assets or money.

VFAA Class 2 Licence holders authorised to provide any VFA service but not to operate a VFA exchange or deal for their own account. Class 2 Licence Holders may hold or control clients' assets or money in conjunction with the provision of a VFA Service.

VFAA Class 3 Licence holders authorised to provide any VFA service but not to operate a VFA exchange. Class 3 Licence Holders may hold or control clients' assets or money in conjunction with the provision of a VFA Service.

VFAA Class 4 Licence holders authorised to provide any VFA service.
Class 4 Licence Holders may hold or control clients' assets or money in conjunction with the provision of a VFA Service.

(2) The competent authority shall set out in the licence the nature of the activities which particular licence holders may carry out.

9. Without prejudice to regulations 7, 27 and 28, none of the fees established and due in terms of these regulations shall be refundable, nor shall they be prorated.

Non-refundable or prorated fees.
Substituted by:
L.N. 134 of 2024.
Amended by:
L.N. 296 of 2024.

Part IV

Control of Assets

10. (1) A subject person having the control of assets belonging to a client in the course of rendering a VFA service to such client, shall hold such assets solely for and on behalf of and in the interest of the client.

Assets held under control constitute a distinct patrimony.

(2) Notwithstanding anything stated in article 1894 of the Civil Code or in the agreement entered into between the subject person and the client or the fact that a client's assets held under the control of a subject person are registered in the name and title of or are otherwise vested in the subject person, such assets shall be deemed to constitute a distinct patrimony, separate from that belonging to the subject person and from that of other clients the assets of whom are also held under the control of the subject person.

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(3) Except as expressly provided in the agreement entered into between the subject person and the client and notwithstanding the provisions of the Civil Code, the control of assets belonging to a client by a subject person shall not give or be deemed or construed to give to the subject person any rights over such assets nor shall it create any form of loan between the subject person and the client and this notwithstanding the nature of the assets or the rights or obligations of the subject person in relation to the assets.

Cap. 16.

11. (1) A client whose assets are held under the control of a subject person enjoys a right of ownership in such assets notwithstanding that they may be registered in the name and title of or are otherwise vested in the subject person. Where such assets are held by the subject person as part of a common pool of identical assets or are otherwise held in a clients' or common account, the client shall have an undivided share in ownership of all the assets held collectively by the subject person in such a pool or account.

Client enjoys right of ownership in assets.

(2) The records, accounts and other statements held or issued by the subject person in terms of regulation 14(3) shall, saving any proof to the contrary, constitute evidence of their contents and of the right of ownership of the client as provided in sub-regulation (1).

Assets held under control not subject to the rights of creditors of the subject person.

12. (1) The creditors of a subject person shall have no claim or right of action on or against the assets held under the control of the subject person for and on behalf of and in the interest of any client and such assets shall not be affected in any manner by the provisions of laws and regulations in force regulating the insolvency or bankruptcy of the subject person.

(2) In the event of any such insolvency or bankruptcy or related order or resolution, or in the event that the competent authority so requires, the subject person or any administrator or receiver or other officer appointed to represent it by any court or otherwise, shall on demand of any client or of the competent authority, immediately transfer the control, possession and title to all assets held by or in the name of the subject person on behalf of the client to another subject person or to such other person as may be instructed by the client or by the competent authority.

(3) In the event that any assets held under the control of the subject person are, at the request of any creditor of the subject person, made subject to any precautionary or executive act or warrant granted by any Court in terms of the Code of Organization and Civil Procedure, the client on whose behalf such assets are being held or the competent authority may, by application to the Court, request the release of the assets from such act or warrant and the Court shall, on the production of evidence as it may deem fit, accede to the application without undue delay.

(4) Security interests, liens or rights of set-off over assets belonging to a client and enabling a third party to dispose of the client's assets in order to recover debts that do not relate to the client or provision of services to the client are not permitted except where this is required by the applicable law in a third country jurisdiction in which the assets belonging to the client are held.

(5) Where a subject person is obliged to enter into agreements that create such security interests, liens or rights of set-off, it shall disclose that information to clients indicating to them the risks associated with those arrangements.

(6) Where security interests, liens or rights of set-off are granted by the subject person over assets belonging to the client, or where the subject person has been informed that they are granted, these shall be recorded in the client's contracts and the subject person's own accounts to make the ownership status of the client's assets clear, such as in the event of an insolvency.

Cap. 12.

13. (1) The delivery of the assets of a client to a subject person and from a subject person to a client or another subject person for the purpose of the control of assets in terms of these regulations shall not be deemed to constitute a chargeable transfer for the purposes of the Duty on Documents and Transfers Act and for the purposes of article 5(1) of the Income Tax Act, where the delivery of such assets does not constitute a change in the beneficial owner of the assets.

Applicability of
Duty on
Documents and
Transfers Act and
Income Tax Act.

Cap.364.

Cap.123.

(2) For the purpose of this regulation, beneficial owner means a person who is the real owner of, or who is otherwise beneficially entitled to, the assets held under control by the subject person, as is provided in regulation 11.

14. (1) A subject person having the control of assets belonging to a client shall safeguard such assets and the interest of the client therein.

Functions and
duties of the
subject person.

(2) The subject person shall carry out such functions and duties as shall be required in accordance with these regulations, the terms and conditions of the agreement entered into with the client, the conditions of any licence, and such other requirements as may be laid down by the competent authority.

(3) The subject person shall maintain proper and adequate records and accounts of all clients' assets held under control.

The records and accounts shall identify the clients to whom such assets belong and shall clearly indicate that the assets of every client are separate and distinct from the assets belonging to the subject person and from other clients' assets held by the subject person. The records and accounts shall, upon due notice being given to the subject person, indicate where any pledge or other right over assets held under the control of the subject person has been given by the clients to any third parties, and where any order by any Court has been made in connection with such assets.

(4) The subject person shall maintain accurate records and accounts in a way that ensures accuracy, and in particular their correspondence to the virtual financial assets and money held for the clients and that they may be used as an audit trail.

(5) The subject person shall conduct, on a regular basis, reconciliations between its records and accounts and those of any third parties with whom client's virtual financial assets and money have been deposited in accordance with regulations 15 and 16.

(6) The subject person entrusted with the control of assets belonging to clients shall, to every extent reasonably possible, segregate in a proper manner the assets of every client from the assets belonging to the subject person and from the assets of other clients:

Provided that the subject person may, with the written

consent of the client and in accordance with the terms and conditions of the agreement entered into with the client, the conditions of any licence and such other requirements as may be laid down by the competent authority and without prejudice to the client's right of ownership over the assets held under control, place and keep such assets in a common pool of identical assets or otherwise deposit them in a clients' or common account.

(7) The subject person shall make appropriate arrangements for the protection of clients' assets held under control and shall ensure that such assets are placed under adequate systems to safeguard such assets from damage, misappropriation or other loss and which permit the delivery of such assets only in accordance with the terms and conditions of the agreement entered into with the client.

(8) Where it is not reasonably possible for the subject person to carry out any of the duties specified in this regulation due to the nature of the assets and of the arrangements whereby control is exercised, the said duties may be varied with the written consent of the client and in accordance with the terms and conditions of the agreement entered into with the client, the conditions of any licence and such other requirements as may be laid down by the competent authority.

(9) The subject person shall take the necessary steps to ensure that any client's virtual financial assets deposited with a third party in accordance with regulation 15 are identifiable separately from the virtual financial assets belonging to the subject person and from the virtual financial assets belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection.

(10) The subject person shall take the necessary steps to ensure that the money belonging to the client held in accordance with regulation 16 with a central bank, a credit institution or a bank authorised in a third country, a money market fund, electronic money institution or a payment institution, are held in an account or accounts separately identifiable from any accounts used to hold money belonging to the subject person.

(11) The subject person shall implement adequate organizational arrangements to minimise the risk of the loss or diminution of assets belonging to the client, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

(12) If, for reasons of applicable law, including the law relating to property or insolvency, a subject person cannot comply with the provisions of this regulation to safeguard clients' rights, the subject person shall implement arrangements to ensure that clients' assets are safeguarded to meet the objectives outlined in this regulation.

(13) The competent authority may issue rules providing requirements which have an equivalent effect in terms of safeguarding clients' rights if the applicable law of the jurisdiction in which the assets belonging to the client are held prevents the subject persons from complying with the provisions of this regulation.

15. (1) A subject person may deposit virtual financial assets held by it on behalf of its clients into an account or accounts opened with a third party:

Deposit of client virtual financial assets with third parties.

Provided that such third party shall:

- (a) hold either a licence under this Act to provide the VFA service listed in paragraph 5 of the second Schedule thereto, or is exempt from licensing under regulation 4(1)(o); or
- (b) be constituted in a recognised jurisdiction, provided that the subject person shall disclose to its clients and to the Authority, the arrangements that will be put in place to ensure adequate safekeeping of assets.

(2) The subject person shall exercise all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those virtual financial assets.

(3) The subject person shall, in particular, take into account the expertise and market reputation of the third party as well as any legal requirements or market practices related to the holding of virtual financial assets that could adversely affect the rights of its clients.

16. (1) A subject person shall, on receiving any client money, promptly place such money with any of the following:

Placing of client money.

- (a) a central bank;
- (b) a credit institution authorised in accordance with the provisions of Directive 2013/36/EU;
- (c) a bank authorised in a third country;
- (d) a money market fund;
- (e) an electronic money institution; or
- (f) a payment institution:

Provided that for the purposes of paragraphs (e) and (f), such money shall only be placed with such institutions for purposes encompassed by their respective licences under the Financial Institutions Act.

Cap. 376.

(2) Where the subject person does not place client money

with a central bank, it shall exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution, bank, money market fund, electronic money institution or payment institution where the money is placed and the arrangements for the holding of such money. The subject person shall furthermore, consider the need for diversification as part of its due diligence.

(3) Where the subject person places client money in accordance with sub-regulation (2), it shall, in particular, take into account the expertise and market reputation of such institutions or money market funds with a view to ensuring the protection of the rights of its clients as well as any legal or regulatory requirements or market practices related to the holding of clients' money that could adversely affect such rights.

(4) The subject person shall ensure that clients give their written consent to the placement of their money in a money market fund, electronic money institution or payment institution.

(5) Where the subject person places client money with a credit institution, bank, money market fund, electronic money institution or payment institution of the same group as the subject person, it shall limit the money placed with any such group, entity or combination of any such group entities so that money does not exceed 20% of all such monies.

(6) The requirement prescribed in sub-regulation (5) can be waived by the competent authority where the subject person is able to demonstrate that, in view of the nature, scale and complexity of its business, and also the safety offered by the third parties considered in sub-regulation (5) and including in any case the small balance of client money the subject person holds, the requirement prescribed in sub-regulation (5) is not proportionate.

(7) The subject person shall periodically review the assessment made in accordance with sub-regulation (6) and shall notify the initial and reviewed assessments to the competent authority.

Use of client
virtual financial
assets.

17. (1) A subject person shall not use virtual financial assets which it holds on behalf of a client for its own account or for the account of any other person or client of the subject person, unless both of the following conditions are met:

(a) the client has given his prior written consent to the use of the virtual financial assets on specified terms; and

(b) the use of that client's virtual financial assets is restricted to the specific terms to which the client consents.

(2) The records of the subject person shall include details of each client on whose instructions the use of virtual financial assets has

been affected as well as the number of virtual financial assets belonging to each client who has given his consent, so as to enable the correct allocation of any loss.

(3) The subject person shall take appropriate measures to prevent the unauthorised use of client virtual financial assets for its own account or the account of any other person.

(4) The subject person shall adopt specific arrangements for all clients to ensure that the borrower of client virtual financial assets provides the appropriate collateral.

(5) The subject person shall monitor the continued appropriateness of the collateral referred to in sub-regulation (4) and take the necessary steps to maintain the balance with the value of client virtual financial assets.

18. (1) The subject person shall appoint a single officer of sufficient skill and authority with specific responsibility for matters relating to the compliance by the subject person with its obligations regarding the safeguarding of client assets.

Governance arrangements concerning the safeguarding of client assets.

(2) The subject persons shall decide whether the appointed officer is to be dedicated solely to this task or whether the officer can discharge responsibilities effectively whilst having additional responsibilities.

(3) The appointed officer shall draw up periodic reports on compliance by the subject person with its obligations regarding the safeguarding of client assets. Such reports are to be provided to the subject person's board of administration.

19. The subject person shall ensure that its external auditors report at least annually to the competent authority on the adequacy of the subject person's arrangements under these regulations:

Reports by external auditors.

Provided that this information shall form an integral part of the report which is to be submitted annually to the competent authority in terms of article 50(6) of the Act.

20. (1) The subject person shall make information pertaining to clients' assets readily available to the following entities:

Provision of Information.

(a) the competent authority;

(b) an auditor appointed in terms of article 50 of the Act; and

(c) appointed insolvency practitioners.

(2) The information to be made available in terms of sub-regulation (1) shall include the following:

(a) related internal accounts and records that readily identify the balances of assets held for each client;

(b) where client money is held by the subject person in accordance with regulation 16, as well as details of the accounts where client money is held and the relevant agreements with those entities;

(c) where virtual financial assets are held by the subject person in accordance with regulation 15, as well as details of accounts opened with third parties and the relevant agreements with those entities;

(d) details of third parties carrying out any related outsourced tasks and details of any outsourced tasks;

(e) key individuals of the subject person involved in related processes, including those responsible for oversight of the subject person's requirements in relation to the safeguarding of client assets; and

(f) agreements relevant to establish client ownership over assets.

Liability of the subject person.

21. (1) A subject person having the control of assets belonging to clients shall be liable for any loss or prejudice suffered by the clients due to the subject person's fraud, wilful default or negligence including the unjustifiable failure to perform in whole or in part the subject person's obligations arising under these regulations, the terms and conditions of the agreement entered into with the clients, the conditions of any licence or such other requirements as may be laid down by the competent authority.

(2) For the purposes of this regulation, subject person includes such other subject person to whom functions, duties or assets may be delegated or entrusted in terms of regulation 22.

Subject person may delegate functions and duties to entrust assets to another subject person.

22. (1) A subject person may delegate part of the functions and duties under regulation 14 to another subject person which is qualified and competent to take the control of clients' assets; and may place, entrust or deposit all or part of a client's assets held under control with such other subject person.

(2) The liability of the subject person for its own acts or omissions shall not be affected or reduced as a result of the subject person delegating functions and duties, or entrusting all or part of the assets belonging to a client, to another subject person.

(3) Where the subject person delegates or entrusts functions, duties or assets in terms of sub-regulation (1) to a person which is a group company, without prejudice to the liability of such person, the subject person shall be liable for any loss or prejudice suffered by the

clients as a result of the acts, omissions or insolvency of such person.

(4) Where the subject person delegates or entrusts functions, duties or assets in terms of sub-regulation (1) to a person which is not a group company, without prejudice to the liability of such person, the subject person shall be liable for any loss or prejudice suffered by the clients as a result of the acts or omissions of such person unless the subject person can prove that such person was and remains qualified and competent to carry out the functions and duties delegated and that the subject person exercised reasonable care to oversee that the functions and duties delegated were undertaken by such person competently.

(5) The liability of the subject person under sub-regulations (3) and (4) may be varied or reduced with the written consent of the client and in accordance with the terms and conditions of the agreement entered into with the client, the conditions of any licence and such other requirements as may be laid down by the competent authority:

Provided that the subject person discloses fully to the client any risks that may be associated with the nature of the arrangements whereby control is to be exercised and that the agreement with the client shall clearly define the extent of liability of the subject person.

(6) Where the subject person delegates or entrusts functions, duties or assets in accordance with specific written instructions from the client, the subject person shall not be liable for any loss or prejudice suffered by that client as a result of the acts or omissions of the person to whom functions, duties or assets are delegated or entrusted as requested by the client.

(7) For the purposes of this regulation, "group company" in relation to a subject person means any body corporate which is the subject person's subsidiary or parent company or a subsidiary of the subject person's parent company, and the terms "parent" and "subsidiary" shall be construed in accordance with article 2(2) of the Companies Act.

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23. The subject person shall have the right to charge fees to the client and to be reimbursed for expenses in accordance with the terms and conditions of the agreement entered into with the client. The subject person may, if authorised to do so by the terms and conditions of the said agreement, exercise a right of retention over the client's assets held under control, to the extent of any lawfully due but unpaid fees and expenses, until such fees and expenses are paid.

Subject person fees.

24. (1) Without prejudice to any requirements as may be laid down by the competent authority, an agreement for the control of assets belonging to a client may be terminated by the client, by the subject person, or by order of the competent authority.

Termination of the control of assets.

(2) Upon the termination of an agreement for the control of assets, the subject person shall convey for no consideration the assets held for the client, as instructed by the client or by the competent authority, without prejudice to the subject person's right to payment of any lawfully due fees or expenses in terms of the agreement entered into with the client and to any obligations arising in favour of the client thereunder.

Part V

Administrative Penalties and Appeals

Administrative penalties, other administrative measures and appeals.
Amended by:
L.N. 25 of 2022.

25. (1) Where a person falling within the scope of these regulations fails to comply with any provisions of such regulations or any rules issued thereunder further implementing such regulations, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty and other administrative measures in accordance with article 48 of the Act.

(2) A right of appeal to the Financial Services Tribunal shall lie from the decisions which the competent authority shall take under these regulations and the provisions of article 51 of the Act shall apply *mutatis mutandis*.

Added by:
L.N. 25 of 2022.

Part VI

Transitory Provisions

Transitory provision.
L.N. 25 of 2022.

26. Any person, who on the date of the coming into force of the Virtual Financial Assets (Amendment) Regulations, 2022 is carrying out an activity in terms of paragraphs (d) or (e) of regulation 4(1), shall within one month from the date of coming into force of the Virtual Financial Assets (Amendment) Regulations, 2021, seek a determination in writing from the competent authority in terms of regulation 4(2) and provide the competent authority with the following information:

(a) a description of the business model;

(b) a statement on the level of activity which that person plans to conduct and the level of activity carried out during the preceding year, which activity would have been licensable had that person not been exempt;

(c) a statement on whether such person engages or will be engaging employees to carry out such activity and the number of employees such person has engaged and, or plans to engage, if applicable; and

(d) the identification details and address of the ultimate beneficial owners.

27. Any person who, on the date of the coming into force of the Virtual Financial Assets (Amendment) Regulations, 2024 is registered with the competent authority to exercise the functions of a VFA agent under articles 7 and, or 14 of the Virtual Financial Assets Act as applicable prior to 16th April 2024, shall upon the coming into force of the said Virtual Financial Assets (Amendment) Regulations, 2024 be entitled to a pro rata refund of the annual supervisory fee established in the Third Column of the Schedule.

Transitory provision.
L.N. 134 of 2024.

Cap. 590.

28. (1) The provisions of regulation 6 shall cease to have effect:

Further transitory provisions relating to fees.
Added by:
L.N. 296 of 2024.

(a) as of 30 June 2024 with respect to the submission of white papers relating to e-money tokens and asset-referenced tokens for registration by the competent authority;

(b) as of 31 July 2024 with respect to the submission of white papers relating to virtual financial assets for registration by the competent authority; and

(c) as of 31 July 2024 with respect to applications submitted to the competent authority for a licence to provide one or more VFA services.

(2) The supervisory fee due in relation to white papers registered by the competent authority, as established in the Third Column of the Schedule, shall no longer be due:

(a) as of 30 June 2024 with respect to such white papers relating to e-money tokens and asset-referenced tokens; and

(b) as of 30 December 2024 with respect to such white papers relating to virtual financial assets.

(3) Notwithstanding the provisions of regulation 7, the provisions of the said regulation shall not apply to licence holders when their licence is cancelled in accordance with article 66(2) of the Act.

(4) Upon the cancellation of a licence in accordance with article 66(2) of the Act, the licence holder shall be entitled to a pro-rata refund of the applicable annual supervisory fee, as established in the Third Column of the Schedule, for that year.

(5) Upon the deregistration of a white paper relating to an e-money token in accordance with article 65(3) of the Act, that issuer of such e-money token shall be entitled to a pro-rata refund of the applicable annual supervisory fee, as established in the Third Column of the Schedule, for that year.

(6) Upon the deregistration of a white paper relating to a

virtual financial asset in accordance with article 65(4) of the Act, that issuer of such virtual financial asset shall be entitled to a pro-rata refund of the applicable annual supervisory fee, as established in the Third Column of the Schedule, for that year.

(7) For the purposes of this regulation:

(a) "asset-referenced tokens" shall have the same meaning as that assigned to it in point (6) of Article 3(1) of the MiCA Regulation;

(b) "e-money tokens" shall have the same meaning as that assigned to it in point (7) of Article 3(1) of the MiCA Regulation;

(c) "MiCA Regulation" means Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that may have been or may be issued thereunder; and

(d) "virtual financial assets" 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:

- (i) electronic money;
- (ii) a financial instrument;
- (iii) a virtual token;
- (iv) an e-money token; or
- (v) an asset-referenced token.

29. The provisions of regulation 4 shall cease to have effect as of 30 December 2024.

Further transitory provisions relating to exemptions from licensing.
Added by:
L.N. 296 of 2024.

SCHEDULE
(Regulations 6 and 7)

Fees				
First Column		Second Column Application/ Notification Fee	Third Column Supervisory Fee	
(a)	Whitepaper registration	€	€	
		8,000	2,000 upon the submission of the certificate of compliance	
(b)	VFA agent Appointed in terms of article 7 of the Act	12,000	12,000	
	Appointed in terms of article 14 of the Act	10,000	10,000	
	Appointed in terms of both articles 7 and 14 of the Act	15,000	15,000	
(c)	Licences VFAA Class 1	6,000	For revenue up to €50,000	5,500
			Further tranches of €50,000 up to a maximum of €1,000,000	700 per tranche or part thereof
	VFAA Class 2	10,000	For revenue up to €250,000	9,000
			Further tranches of €250,000 up to a maximum of €5,000,000	800 per tranche or part thereof
	VFAA Class 3	14,000	For revenue up to €250,000	12,000
			Further tranches of €250,000 up to a maximum of €50,000,000	800 per tranche or part thereof

	VFAA Class 4	24,000	For revenue up to €1,000,000	50,000
			Further tranches of €1,000,000 up to a maximum of €100,000,000	5,000 per tranche or part thereof
