



FINANCIAL INTELLIGENCE ANALYSIS UNIT
CONSULTATION DOCUMENT

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**Consultation Process on the Application of FATF
Recommendation 16 within the Virtual Financial Assets
Sector**

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CONSULTATION CLOSING ON 18 SEPTEMBER 2020

Consultation Document

Over the past few years there has been an increased interest in virtual financial assets and services related thereto. This increased interest has spurred a number of jurisdictions to develop regulatory frameworks governing these services. A key objective of any regulatory framework is to address and mitigate in as an effective manner as possible any risks associated with a given service, product or activity. To this end, regulatory frameworks are mostly modelled on best practices and aligned with international standards in the area.

Key amongst the risks associated with virtual financial assets is that of money laundering and funding of terrorism. Criminals and their associates have been known to exploit the benefits and characteristics of virtual financial assets to their advantage, with virtual financial assets at times being the proceeds of criminal activities or otherwise used in the process of laundering ill-gotten assets, or even fund terrorists. This situation has led the Financial Action Task Force to revise its Recommendations so as to ensure that virtual financial assets and related services are equally be covered by the FATF 40 Recommendations.

One of the main Recommendations rendered applicable to the virtual financial assets sphere is Recommendation 16, or the so-called 'Travel Rule'. Recommendation 16 was developed with the objective of preventing terrorists and other criminals from having unfettered access to electronic transfer services for moving their funds, and for detecting such misuse when it occurs. To this end, this recommendation requires service providers to transmit, together with the funds, information on the originator and the beneficiary of the funds' transfer. Following the revision referred to hereabove, Recommendation 16 has been extended to also cover those service providers who carry out transfers of virtual financial assets.

The present Consultation Document is being issued by the Financial Intelligence Analysis Unit, following consultation with the Malta Financial Services Authority, and it sets out a proposal on how it is envisaged that the requirements of Recommendation 16 be rendered applicable to transfers of virtual financial assets carried out by service providers licensed under the Virtual Financial Assets Act. Interested parties are invited to provide feedback on the proposed regulations by not later than Friday, 18 September 2020. Any feedback is to be communicated via email on consultations@fiaumalta.org.

**Prevention of Money Laundering Act (Transfer of Virtual Financial Assets)
Regulations**

1. (1) The title of these regulations shall be the Prevention of Money Laundering Act (Transfer of Virtual Financial Assets) Regulations.

(2) The objective of these regulations is to provide for the information that is to be transmitted simultaneously or concurrently with all transfers of virtual financial assets.
2. (1) The terms used in these regulations shall, unless the context otherwise requires, or unless otherwise defined in these regulations, have the same meaning attributed to the said terms under the Prevention of Money Laundering Act.

(2) In these regulations, unless the context otherwise requires –

“Act” means the Prevention of Money Laundering Act;

“authorized person” means:
 - (a) a VFA service provider; or
 - (b) any person situated in a reputable jurisdiction who has been authorized by the authorities of the said jurisdiction to carry out transfers of VFAs and who is subject to supervision to ensure compliance with anti-money laundering and funding of terrorism obligations equivalent to those arising from the Act, the Prevention of Money Laundering and Funding of Terrorism Regulations and these regulations;
“beneficiary” means the intended recipient of a transfer of VFAs;

“business relationship” shall have the same meaning assigned to the term by the Prevention of Money Laundering and Funding of Terrorism Regulations;

“hosted wallet” means a wallet held by an authorized person in the name and on behalf of the originator or the beneficiary;

“intermediary VFA service provider” means a VFA service provider that receives a VFA transfer for onward transmission;

“originator” means any individual, legal person or legal arrangement on whose behalf a transfer of funds is being executed;

“transfer of VFAs” means any transaction carried out by electronic means on behalf of an originator with the intention of making VFAs available to a beneficiary, through the services of an authorized person, irrespective of whether the originator and the beneficiary are the same person

and irrespective of whether the VFA service provider of the originator and that of the beneficiary are one and the same;

“unhosted wallet” means any wallet other than a hosted wallet;

“VFA service provider” means any natural or legal person who has been issued with a licence to provide one or more of the services listed in the Second Schedule to the Virtual Financial Assets Act;

“VFAs” shall have the same meaning as is assigned to the term under the Virtual Financial Assets Act.

3. (1) Without prejudice to any obligations that a VFA service provider may have under the Act or under the Prevention of Money Laundering and Funding of Terrorism Regulations, any VFA service provider acting on behalf of an originator shall ensure that simultaneously or concurrently with the transfer of VFAs there shall also be transmitted to the authorized person acting on behalf of the beneficiary the following information:
- (a) The official full name of the originator and of the beneficiary;
 - (b) The address of the hosted wallet of the originator and of the beneficiary;

Provided that where no such address is available, the VFA service provider of the originator shall instead transmit the unique transaction hash identifying the particular transfer of VFAs in the related distributed ledger;

- (c) The originator’s permanent residential address, or the originator’s identity reference number, or the originator’s identification number or his date and place of birth.

- (2) Before transferring any VFAs, the VFA service provider shall verify the information on the originator set out in sub-regulation 1 hereabove on the basis of documents, data or information obtained from a reliable and independent source:

Provided that where the VFA service provider has a business relationship with the originator, it shall be sufficient for the VFA service provider to have verified the identity of the originator in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations.

- (3) Where the transfer of VFAs does not exceed Euro one thousand (€1,000) in value and it does not appear to be linked to any other transfer of VFAs which together would exceed Euro one thousand (€1,000) in value, the VFA service provider may:

- (a) transmit only the information referred to in paragraphs (a) and (b) of sub-regulation 1 hereabove; and

- (b) refrain from carrying out the verification required in terms of sub-regulation 2 hereabove unless there is a suspicion of money laundering or the funding of terrorism or the VFAs are acquired from the VFA service provider by means of cash or anonymous electronic money:

Provided that where there is a suspicion of money laundering or the funding of terrorism, the VFA service provider shall report the transaction to the Unit as required in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations.

- (4) Where the VFA service provider is unable to comply with any of the obligations set out in this regulation, the VFA service provider shall not carry out the transfer of VFAs.

- 4. (1) Where the transfer of VFA exceeds Euro one thousand (€1,000) in value, be it in a single operation or in two or more linked operations, the VFA service provider of the beneficiary shall verify the accuracy of the information on the beneficiary prior to making the VFAs received available to the beneficiary, with the said verification to be carried out on the basis of data, information and documentation that is independent and reliable:

Provided that where the transfer of VFAs does not exceed Euro one thousand (€1,000) in value, the VFA service provider shall not be required to carry out verification of the information referred to hereabove unless the VFA service provider suspects money laundering or the funding of terrorism, in which case the VFA service provider shall not only carry out verification but shall also report the transaction to the Unit in line with its obligations under the Prevention of Money Laundering and Funding of Terrorism Regulations, or the beneficiary requests that the VFAs be converted in cash or anonymous electronic money;

Provided further that where the beneficiary has a business relationship with the VFA service provider, it shall be sufficient for the VFA service provider to verify the identity of the beneficiary as required in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations.

- (2) The VFA service provider of the beneficiary shall adopt and implement measures, controls, policies and procedures to:

- (a) detect whether the fields in the system used to transmit the information referred to in regulation 3 have been filled in using characters or inputs admissible in accordance with the conventions of the system;
- (b) carry out real time and ex-post monitoring so as to detect whether the information required under regulation 3 is missing, in whole or in part;
- (c) determine on a risk sensitive basis whether to execute, reject or suspend a transfer of VFAs in relation to which the information referred to in regulation 3 has not been made available in whole or in part, and for the taking of follow-up action.

- (3) Where the VFA service provider of the beneficiary determines that the information required in terms of regulation 3 is missing, incomplete or that the fields corresponding thereto

have been otherwise filled in with characters or inputs that are not admissible in accordance with the convention of the system, the VFA service provider shall on a risk sensitive basis, either reject the transfer or otherwise ask for the required information before or immediately after making the VFAs available to the beneficiary.

(4) Where the authorized person repeatedly fails to provide the required information, the VFA service provider of the beneficiary shall take steps, including the issuing of warnings and setting of deadlines, failing which the VFA service provider of the beneficiary is either to reject any future transfer of VFAs or otherwise restrict or terminate its relationship with the VFA service provider.

(5) Without prejudice to the obligation of VFA service providers to report any transaction or activity they know, suspect or otherwise have reasonable grounds to suspect to be linked to money laundering or the funding of terrorism, or any other reporting obligations that the VFA service provider of the beneficiary may have under any other law, a VFA service provider who receives missing information shall report the said failure, together with any steps take to address the same, to the Unit.

5. (1) Where the VFA service provider is acting as an intermediary VFA service provider, the VFA service provider shall adopt and implement measures, controls, policies and procedures to:

- (a) detect whether the fields in the system used to transmit the information referred to in regulation 3 have been filled in using characters or inputs admissible in accordance with the conventions of the system;
- (b) carry out real time and ex-post monitoring so as to detect whether the information required under regulation 3 is missing, in whole or in part;
- (c) determine on a risk sensitive basis whether to execute, reject or suspend a transfer of VFAs in relation to which the information referred to in regulation 3 has not been made available in whole or in part, and for the taking of follow-up action.

(2) Where the intermediary VFA service provider determines that the information required in terms of regulation 3 is missing, incomplete or that the fields corresponding thereto have been otherwise filled in with characters or inputs that are not admissible in accordance with the convention of the system, the VFA service provider shall on a risk sensitive basis, either reject the transfer or otherwise ask for the required information before or after proceeding with the transfer of VFAs.

(3) Where an authorised person repeatedly fails to provide the required information, the intermediary VFA service provider shall take steps, including the issuing of warnings and setting of deadlines, failing which it is either to reject any future transfer of VFAs or otherwise restrict or terminate its relationship with the VFA service provider.

(4) Without prejudice to the obligation of VFA service providers to report any transaction or activity they know, suspect or otherwise have reasonable grounds to suspect to be linked to

money laundering or the funding of terrorism, or any other reporting obligations that the intermediary VFA service provider may have, the intermediary VFA service provider who receives missing information shall report the said failure, together with any steps take to address the same, to the Unit.

6. Where a VFA service provider receives VFAs directly from an unhosted wallet, it shall obtain the information on the originator referred to in regulation 3(1) from the beneficiary.

7. (1) VFA service providers shall, in transmitting the information referred to in regulation 3 hereabove, make use of systems, networks or other means that are secure and safeguard the integrity and confidentiality of the said information.

(2) The VFA service provider shall retain any data, information or documentation collected to meet its obligations under these regulations for a period of five (5) years from the date of the execution of the transfer of VFAs:

Provided that where there are two or more operations that appear to be linked together, the aforesaid period of five (5) years shall commence on the date on which the last operation took place:

Provided further that the period of five (5) years may be further extended, up to a maximum retention period of ten (10) years, where such extension would be considered necessary for the purposes of the prevention, detection, analysis and investigation of money laundering or funding of terrorism by the Unit, relevant supervisory authorities or law enforcement agencies.

(3) The VFA service provider shall have systems in place which enable it to respond fully and efficiently, through secure means of communications to any request for information made by the Unit or, as allowed in terms of applicable law, by supervisory authorities and law enforcement agencies, for the purposes of the prevention, detection, analysis and investigation of money laundering and the funding of terrorism.

(4) The retention of personal data shall no longer be deemed necessary for the purposes of these regulations beyond the period established in terms of sub-regulation (2) or any extension thereof as may become applicable in terms of the second proviso to sub-regulation (2).

(5) The processing of personal data for the purposes of the Act and these regulations shall be deemed to be a matter of public interest under Regulation (EU) 2016/679, and the term "personal data" shall have the same meaning as is assigned to it under Regulation (EU) 2016/679.

(6) The provisions of this regulation shall be without prejudice to the right of any other authority in terms of applicable law to access the documents, data and information collected in terms of these regulations.

8. (1) The Unit, with the concurrence of the relevant supervisory authority, may issue procedures and guidance as may be required for the carrying into effect of the provisions of these regulations, and which shall be binding on VFA service providers.
- (2) The Unit shall be responsible to monitor that VFA service providers meet their obligations under these regulations and any procedures and guidance issued under sub-regulation 1 hereabove, for the purposes of which the Unit may exercise any of the powers granted to it under Article 26 of the Act.
- (3) In accordance with Article 13 of the Act, any VFA service provider who contravenes any provision of these regulations or of any procedure or guidance issued in terms of sub-regulation 1 hereabove as well as any lawful requirement, order or directive given by the Unit shall be liable to an administrative penalty of not less than two hundred fifty Euro (€250) and not more than forty-six thousand five hundred Euro (€46,500) in respect of every separate breach:
- (4) Notwithstanding the provisions of sub-regulation (3), the Unit may:
- (a) with respect to minor contraventions and where the circumstances so warrant, impose an administrative penalty below the minimum established by these regulations but not less than two hundred and fifty Euro (€250) or issue a reprimand in writing instead of an administrative penalty;
 - (b) with respect to serious, repeated or systematic contraventions, impose administrative sanctions that in total are not to exceed Euro one million (€1,000,000);
 - (c) instead of or in conjunction with the imposition of any administrative penalty as envisaged under this regulation, require the VFA service provider to take any action or measure to remedy such contravention or to ensure compliance with the provisions of these regulations or any procedures issued by the Unit.
- (5) Administrative measures under these regulations shall be imposed by the Unit without recourse to a court hearing and in accordance with policies and procedures established by the Board of Governors referred to in the Act, which shall ensure that any measure imposed is effective, dissuasive and proportionate.
- (6) The Unit may impose penalties either as a one-time fixed penalty or as a daily cumulative penalty or both:

Provided that an administrative penalty imposed on a daily cumulative basis shall not be less than two hundred and fifty (€250) and the accumulated penalty shall not exceed the maximum set out under sub-regulations 3 and 4(b) as may be applicable.

(7) Article 13A to Article 13C of the Act shall be equally applicable in relation to any administrative measure imposed on a VFA service provider for any contravention of these regulations or of any procedures or guidance issued in terms of sub-regulation 1 hereabove.

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