

# PILLAR 1 - REGULATIONS

MFSA FinTech Strategy



**CONSULTATION DOCUMENT**

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# Foreword by the CEO



## Foreword by the CEO



Joseph Cuschieri  
Chief Executive Officer

Our vision, as the single regulator for financial services in Malta, is to build on past successes by being a leading and forward-looking regulator. In this respect, we are contributing towards the stability and sustainable growth of the industry whilst at the same time protecting consumers of financial services.

A step towards achieving this vision and building on the MFSA's FinTech Strategy is the publication of this Consultation Document on Pillar 1 – Regulations. From the feedback received on the FinTech Strategy, we are aware that the proposal for a Regulatory Sandbox is highly anticipated. That being stated, Pillar I also discusses the application of the proportionality principle, the adoption of RegTech and SupTech, as well as smart regulation.

New technologies are enhancing consumer experience and improving transparency for financial products and services; however, existing regulatory frameworks may not fully cater for such innovations. Through the proposed MFSA Regulatory Sandbox, start-ups and established entities alike will have the opportunity to test the commercial and regulatory viability of their innovations. This will be conducted in a fully functioning financial services environment, operating under a set of conditions and limitations, in order to strictly contain any inherent risks.

The application of the principle of proportionality will be based on the perceived level of risk of an entity's business model, target audience and the product or service being offered. This will also serve as an opportunity for the MFSA to build on existing technical capacity, identify significant risks and subsequently respond with the appropriate frameworks. This will allow the financial services industry to flourish within an environment which provides legal and regulatory certainty whilst concurrently ensuring effective investor protection, market integrity and financial soundness.

We acknowledge that financial services firms face an ongoing challenge to comply with regulations which are constantly developing and becoming more complex. With this in mind, the MFSA is advocating the adoption of RegTech solutions by the industry to improve compliance through greater certainty and efficiency. The Authority is also itself embracing technology by investing in state of the art SupTech. RegTech and SupTech will pave the way for the financial services industry to operate in an efficient manner, provide a better product or service and increase the level of competition for the ultimate benefit of the end consumer.

Following the publication of this Consultation Document, I look forward to receiving your feedback and to further collaborate so that together we can take another step towards making Malta a leading financial services centre.

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# Chapter 1

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## Introduction



# 1 Introduction

Following the publication of its FinTech Strategy ([link](#)) on 15 May 2019, the Malta Financial Services Authority ('MFSa' or 'the Authority') is now delving into further detail with respect to each of the identified six pillars and focusing on the implementation of the strategic objectives outlined therein.

Through the first Pillar, Regulations, the MFSa envisages to *“adopt regulatory and supervisory initiatives to support innovation and improve regulatory efficiency.”* The Authority is thus publishing this Consultation Document proposing (i) the MFSa Regulatory Sandbox, which will encourage financial technology ('FinTech') innovation through its stated objectives and (ii) proposals in relation to Regulatory Technologies ('RegTech') and Supervisory Technologies ('SupTech'). Additionally, a status update of the other strategic objectives presented under Pillar 1 of the FinTech Strategy is also provided.

By virtue of this Consultation Document the Authority is seeking to obtain industry feedback in relation to the proposed measures with respect to Pillar 1.

This Consultation Document consists of four additional sections as follows:

- **Chapter 2** provides a status update on the MFSa's current initiatives in relation to the Pillar 1 strategic priorities of proportionality and smart regulations.
- **Chapter 3** outlines the MFSa's objective to establish a Regulatory Sandbox and presents the various approaches towards its implementation.
- **Chapter 4** sets out regulatory and supervisory technology initiatives that the MFSa is proposing.
- **Chapter 5** seeks feedback from the industry through a set of questions as a conclusion to this Consultation Document.

# Chapter 2

## Status Update



## 2 Status Update

### 2.1 FinTech and Innovation Function

As communicated in the MFSa's Press Release ([link](#)), issued on 29 March 2019, the reorganisation of the MFSa saw the establishment of the FinTech and Innovation function, under the MFSa's Strategy, Policy and Innovation Directorate. The function is currently mandated to (i) implement the FinTech Strategy and (ii) regulate and supervise the Virtual Financial Assets ('VFA') Framework. As indicated in the MFSa FinTech Strategy, the Authority will continue to invest in this function through capacity building, technology and training initiatives to drive the successful execution of this Strategy.

### 2.2 Proportionality

In order to further encourage entry and growth of start-ups and scale ups within the FinTech space, the MFSa is currently in the process of evaluating the principle of proportionality as enshrined in financial services legislation and its implications from a regulatory and supervisory perspective. Through this process, the Authority will assess where and how the principle of proportionality may be applied in its regulatory and supervisory capacity when dealing with such entities.

The Authority also intends to explore this concept further through the Regulatory Sandbox. While analysing each proposed solution to be tested in the Sandbox, the Authority expects to identify whether the principle of proportionality can be applied and the appropriate regulatory or supervisory response. Any developments in this respect shall be communicated on the MFSa FinTech page ([link](#)).

### 2.3 Smart Regulations

The MFSa is currently assessing the appropriate way to explore the viability of making regulatory reporting requirements machine-readable and executable. Further details shall be communicated in due course.

# Chapter 3

## Regulatory Sandbox



```
...ject to mirror_ob
mirror_mod.mirror_object = mirror_ob

operation == "MIRROR_X":
    mirror_mod.use_x = True
    mirror_mod.use_y = False
    mirror_mod.use_z = False
operation == "MIRROR_Y":
    mirror_mod.use_x = False
    mirror_mod.use_y = True
    mirror_mod.use_z = False
operation == "MIRROR_Z":
    mirror_mod.use_x = False
    mirror_mod.use_y = False
    mirror_mod.use_z = True

...selection at the end -add back the deselected
mirror_ob.select= 1
mirror_ob.select=1
context.scene.objects.active = modifier_ob
name="selected" + str(modifier_ob) # modifier
mirror_ob.select = 0
try:
    context.selected_objects[0]
except:
    context.objects[one.name].select = 1

print("please select exactly two objects,")

OPERATOR CLASSES -----

class Operator:
    def __init__(self, context):
        self.active_object = None
        self.mirror_mirror_x = "Mirror X"
```

## 3 Regulatory Sandbox

### 3.1 Introduction

Recently a number of jurisdictions have established Regulatory Sandboxes - environments which support and facilitate innovation whilst safeguarding consumer protection, market integrity and financial soundness.

Malta is already offering a business environment conducive to financial technology innovation, especially in the Distributed Ledger Technology ('DLT') sphere as evident from the implementation of the VFA Framework. The MFSA is now proposing to set up a Regulatory Sandbox to further support technology-enabled financial innovation.

The MFSA Regulatory Sandbox ('the Sandbox') will provide the opportunity for its Participants to test the commercial and regulatory viability of their innovations for a specified period of time in a fully functional financial services environment, under a set of conditions and limitations, in order to strictly contain the associated risks to the said consumers and the financial system.

This testing environment will not only cater for financial services falling under the MFSA's current regulatory and supervisory perimeter, but also for those services that do not clearly fall under specific financial services legislation. Additionally, the Regulatory Sandbox will also cater for other products and services that enable or facilitate the provision of such financial services, such as, amongst others, solutions pertinent to Customer Due Diligence ('CDD') and Know Your Customer ('KYC'), Anti-Money Laundering ('AML'), RegTech and SupTech.

Therefore, the Regulatory Sandbox will be useful for both established incumbent financial services providers and new entrants, including start-ups, scale ups and technology firms, leveraging existing or new disruptive technology in an innovative way to provide or support the provision of a financial services offering.

### 3.2 Objectives

The primary objectives of the Sandbox are to support sustainable financial innovation and to reduce regulatory uncertainty. These will be achieved through the following principles:

- i. **Fostering innovation**  
As noted above, the Sandbox will provide the opportunity for its Participant to test the commercial and regulatory viability of their financial innovations, for a specified period of time in a fully functional financial services environment.
- ii. **Ensuring effective investor and consumer protection**  
Through enhanced supervision, the MFSA will be closely monitoring the sandbox Participants and observing whether the innovations truly offer an added value to the ultimate consumer. Additionally, the Sandbox will offer a testing environment specifically designed to strictly limit risks to consumers through specific safeguards available to the Authority.
- iii. **Enhancing firms' understanding of regulatory expectations**  
Participants will have an open line of dialogue with the MFSA through a dedicated contact point. This contact point, and the other regulatory and supervisory experts, will provide Sandbox Participants with the necessary regulatory and supervisory support in relation to the application of applicable requirements.
- iv. **Knowledge sharing**  
Through the Sandbox, the Authority will have the opportunity to study the financial innovations being employed while assessing their regulatory and supervisory implications. Furthermore, in the case of ambiguous financial innovations, the Sandbox would also provide the Authority with the necessary space to determine the appropriate regulatory and supervisory requirements - these will be used to implement future policy measures.

#### Q1 Do you agree with the objectives of the Sandbox?

### 3.3 Scope and Applicability

It is being proposed that the Regulatory Sandbox will be open to all FinTechs which is defined by the European Banking Authority ('EBA') as *“technologically enabled financial innovation that could result in new business models, applications, processes or products with an associated material effect on financial markets and institutions and the provision of financial services”*<sup>1</sup>.

Therefore it is envisaged that three types of technology enabled financial innovation will fall within scope of the MFSA Regulatory Sandbox, as follows:

- i. **Product Innovation**  
Innovative financial products or services offerings leveraging on innovative technology/ies.
- ii. **Process Innovation**  
Innovative processes using innovative technology/ies underlying the provision of, or materially supporting the provision of, financial products and/or services offerings.
- iii. **Institutional Innovation**  
Innovative institutional arrangements or business models based on innovative technology/ies which underlie the provision of, or materially support the provision of, financial products and/or services offerings.

The above may either (1) clearly fall under existing legislation; (2) be ambiguous as to which regulatory framework applies; or (3) be unregulated. It is also noted that FinTechs which clearly fall under existing legislation, will require full authorisation under the applicable framework.

## Q2 Do you agree with the scope of the Sandbox?

### 3.4 Legal Framework

The MFSA is considering one of two possible approaches to establish and implement the Regulatory Sandbox:

- i. **Option 1 - Standalone Framework**  
Under this option, the Sandbox will be established by virtue of a standalone framework, through the proposal of a legal instrument presenting the Regulatory Sandbox framework.  
  
The proposal of such a legal instrument will ensure that the Sandbox would have the necessary legal foundations and supporting structures to enable authorised firms to benefit from the opportunity of testing solutions in a Sandbox environment. Additionally, the legal instrument would also provide for a Sandbox Licence which would be granted to Sandbox Participants.
- ii. **Option 2 - No Changes**  
This option would leverage on the existing powers under the MFSA Act and thus, the establishment of the Sandbox would not require a standalone framework or any additional changes to the existing legislation.

<sup>1</sup> EBA. (2018). The EBA's FinTech Roadmap - Conclusions from the consultation on the EBA's approach to financial technology (FinTech). Retrieved 05 12, 2019, from European Banking Authority ([link](#)).

This is being considered due to the fact that the MFSa's statutory objectives and powers under the MFSa Act, as well those under sector specific legislation, are wide enough to cater for the establishment and implementation of the Sandbox. Under such a scenario, the Sandbox would be considered as another tool available to the Authority in developing regulatory and supervisory policies in relation to emerging activities.

### **Q3 Which option would you prefer and why?**

#### 3.5 Sandbox Structure

The Sandbox may be structured in such a way to accept calls for application either (i) in tranches, whereby entities may apply to conduct their respective tests on a cohort basis of two six-month test periods per year, or (ii) on a special cohort basis, wherein the Sandbox will be open on ad-hoc basis to tackle specific FinTech solutions and/or challenges.

The MFSa is proposing to make use of both the above structures, applying certain modifications to the latter, as outlined below.

##### **i. Bi-annual cohorts**

The main configuration of the Sandbox will revolve around the bi-annual cohort structure. A group of Applicants will be accepted and selected to test their solutions in the Sandbox at the same time for a period of six months. The proposed solutions do not necessarily need to have the same characteristics. The number of firms accepted within each bi-annual cohort will be contingent on the MFSa's resources as at that date. Acceptance and participation within each bi-annual cohort is subject to the Applicant's solution meeting the eligibility criteria and selection by the Selection Board, as highlighted in Section 3.6.2.2 and Section 3.6.2.3 respectively.

##### **ii. Special purpose cohorts**

The MFSa also intends to open the Sandbox for special purpose cohorts, which would cater for specific solutions or challenges proposed by the Authority or depending on industry feedback. The chosen Participants of special purpose cohorts will run concurrently within the Sandbox, but independently of the cohorts running bi-annually mentioned above. The time duration and eligibility criteria will be set specifically for each specific purpose cohort depending on the solution or challenge as presented by the Authority.

Applications and the respective timelines for each bi-annual cohort and special purpose cohort will be published on the Regulatory Sandbox website. The MFSa will also publish, for transparency purposes, the list of the Participants included in that bi-annual cohort and special purpose cohort, as applicable.

### **Q4 Do you think these structures allow for the proper functionality of the Sandbox? If not, what is your proposed alternative?**

#### 3.6 Sandbox Lifecycle

It is being proposed that the Sandbox Lifecycle for both bi-annual cohorts and special purpose cohort will consist of six stages as presented in Figure 3-1. The MFSa expects the above time-frames to be met, unless circumstances outside the Authority's control prevent it from doing so.

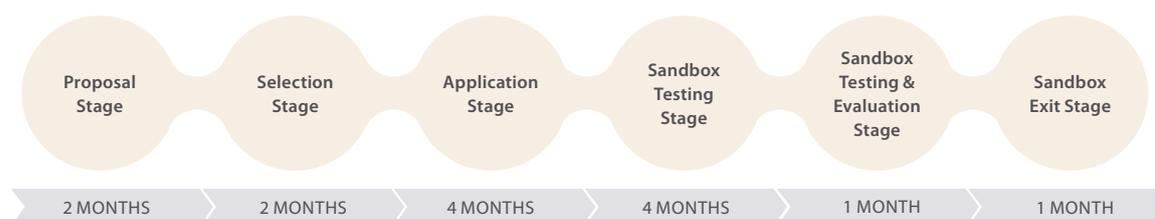


Figure 3-1: Sandbox Lifecycle

Additionally, the Sandbox Lifecycle would be complemented with a regulatory and supervisory framework within which the Sandbox would operate. Further detail in relation to each stage and the MFSA’s proposals in relation to thereto are presented in Section 3.6.1 to Section 3.6.6.

The MFSA expects that persons wishing to participate in the Sandbox will be directly available during this process in case where further information or clarifications to any issue are being sought before making a decision on the respective proposals or applications.

**Q5 What is your opinion on the Sandbox Lifecycle and its timelines?  
Do you have any other proposed alternative/s?**

*3.6.1 Stage 1 - Proposal Stage*

During the Proposal Stage, the MFSA will issue a call for interest to the industry, during which interested Participants (‘Applicants’) would need to submit their proposal to the MFSA through a specific Sandbox Proposal Form. This Form will be made available on the MFSA’s website and will require the Applicants to set out their business plan and describe how their proposed solution meets the Sandbox eligibility criteria. The Sandbox Proposal Form will, *inter alia*, request for:

- i. the Applicant contact and general details;
- ii. a detailed description of the financial innovation and business model;
- iii. an explanation as to how the proposal meets the Sandbox Eligibility Criteria;
- iv. an explanation as to why participation in the Sandbox will be beneficial;
- v. the nature of the test/s to be carried out within the Sandbox; and
- vi. a non-refundable proposal fee.

This period shall be open for two months and only basic details pertaining to the Applicant and its innovative business model are required given that this will be used to assess whether the Applicant and its proposal are eligible to participate within the Sandbox. It is also being proposed that the non-refundable proposal fee will be set at Euro 200.

**Q6 What is your opinion on the proposals set out under Stage 1?  
Do you have any proposed alternative/s?**

*3.6.2 Stage 2 - Selection Stage*

*3.6.2.1 Structure*

During this stage, the proposals will be ranked in terms of the eligibility criteria, and subsequently these will then be presented for selection to the Sandbox Selection Board.

### 3.6.2.2 Eligibility criteria

As noted earlier, participation within the Sandbox requires Applicants to meet certain mandatory eligibility criteria. This is being proposed in order to ensure that only proposals which truly merit the use of the Sandbox are selected. The proposed Sandbox Eligibility Criteria are as follow:

- i. **Innovation**  
The proposal should actually be innovative or significantly different from current solutions available on the marketplace. The proposal should also make use of emerging technologies or represent a significant scale-up in existing technologies deployed in the market.
- ii. **Need for testing**  
The proposal should have a genuine need for testing in the Sandbox. This can be manifested through various means, inter alia, including, (1) clear evidence that the Sandbox will be beneficial to the Participant and the MFSA and (2) ambiguity as to which regulation the proposal falls under.
- iii. **Readiness of the Applicant**  
The Applicant should set-up clear objectives and parameters, and should clearly demonstrate that the proposal is ready to be tested within the Sandbox. Furthermore, the Applicant should set up a reporting schedule stating the format and content (e.g. Key Performance Indicators) of the report that will be submitted to the MFSA throughout the testing period, including a clear methodology of the testing and controls required.
- iv. **Consumer benefit**  
The proposed solution should offer an identifiable and direct benefit (e.g. improving security or quality of service) or indirect benefit to consumers (e.g. increasing competition). It has to adequately identify and address any resulting risk for consumers and the market. It should also have in place a suitable mitigation plan to manage those risks and ensure protection to consumers throughout the testing period.

Determining whether the submitted proposals meet these eligibility criteria will be at the discretion of the MFSA, based on the information provided by the Applicant. Moreover, for the sake of clarity, further guidance in relation to the positive and negative considerations taken into account by MFSA when assessing such a proposal shall be issued in due course.

### 3.6.2.3 Sandbox Selection Board

Following their submission, the proposals will be ranked in terms of eligibility depending on their particular features and the information presented by Applicants. In this respect, given that each cohort shall be limited in the number of Participants, the MFSA is proposing to establish an internal Sandbox Selection Board ('the Board') which would be entrusted to select a limited number of proposals from those eligible. Selected Applicants would then proceed to Stage 3 of the Sandbox Lifecycle.

It is envisaged that the terms of reference of the Board will be established under the stand alone framework and will operate independently from officials reviewing the proposals. Additionally, the Board will be assigned to select proposals which fall within the MFSA's risk tolerances as well as be collectively knowledgeable in all sectors of the financial services landscape and technology.

**Q7**

**What is your opinion on the proposal set out under Stage 2?  
Do you have any proposed alternative/s?**

### 3.6.3 Stage 3 - Application Stage

#### 3.6.3.1 Structure

The selected Applicants will be informed by the MFSA and requested to submit their application to the MFSA within two months of the Authority's acceptance together with the applicable application fee. The application will be made available on the MFSA website in due course. It is noted that the outcome of this stage would also depend on the type of applicant as identified under Section 3.6.3.3.

The Application will be used by the Authority to perform its fitness and properness assessment of the Applicant and will require information regarding, *inter alia*, (1) the Unitholding Structure, (2) the Board of Administration of the Applicant, (3) detailed business model and (4) a detailed exit strategy.

Following its assessment, the MFSA shall grant a provisional authorisation together with the Sandbox Licence, or otherwise, refuse authorisation. The Participants will be allowed to start testing their proposals in the Sandbox when the respective bi-annual cohort or special purpose cohort, as applicable, is opened. Otherwise, if the application is refused, the Applicant will be refunded half the application fee and would be eligible to apply again for future cohorts.

The Sandbox licence shall only be valid for a six month period, which may be extended depending on certain conditions.

#### 3.6.3.2 Participant Development Leads

The MFSA will assign a dedicated contact point, or Participant Development Lead, with every Sandbox Participant. These proposed Leads will be assigned at this Stage to guide Sandbox Participants and provide them with the necessary regulatory and supervisory support both during this stage and the stages thereafter.

#### 3.6.3.3 Types of Applicants

The MFSA envisages Sandbox Applicants falling within one of these categories:

- i. **Authorised persons testing proposals which are covered by their existing authorisation**  
Such Applicants would only require a Sandbox Licence to test an innovative solution in the Sandbox.
- ii. **Authorised persons testing proposals which are not covered by their existing authorisation but falling within scope of existing legislation**  
In addition to the Sandbox Licence, such Applicants would also require a provisional authorisation to cover the proposal as an extension of their existing authorisation.
- iii. **Unauthorised persons testing proposals falling within scope of existing legislation**  
In addition to the Sandbox Licence, such Applicants would require:
  - *Authorisation*: if authorisation is sought, such Applicants would also require a provisional authorisation to cover the proposal, together with the Sandbox Licence.
  - *Partnering with an authorised person*: under such a scenario, the Applicant would consist of both MFSA authorised person and the FinTech. Subject that all the relevant agreements are in place, the FinTech will be considered as an outsourcing party. Therefore, in this case point (i) and (ii) would apply.

iv. **Un/authorised persons testing proposals falling outside scope of existing legislation**

These Applicants would be granted a Sandbox Licence clearly outlining the regulatory and supervisory requirement and conditions applicable to the Sandbox Testing Stage.

International entities wishing to test a financial innovation may be granted access the Sandbox through any of the above arrangements. This notwithstanding, in the case of point (iv) above, a partnership with an MFSA authorised person would be required.

It is reiterated that proposals which clearly fall under existing regulation would require the applicable authorisation to provide the service and/or to perform the activity within the Sandbox. Therefore, Applicants will not be able to circumvent any regulatory or supervisory requirements, unless otherwise explicitly determined by the Authority.

#### 3.6.3.4 *Authorisation Conditions*

Participation within the Sandbox shall be subject to certain conditions which shall be identified either under the provisional authorisation or Sandbox Licence, as applicable. These conditions will be determined by the MFSA and may be imposed on authorised persons on a case-by-case basis to mitigate any identified risks in relation to the proposal.

It is noted that these conditions will be discussed with the applicant prior to their issuance and may be modified during the lifecycle depending on the Participant's performance and adherence to regulatory and supervisory requirements.

Such conditions may include, *inter alia*, limitations on the number of clients and/or product/services offerings, restrictions on types of clients, limitations on the volumes of products or services provided and restrictions to the local market, in the extent that cross-border activities are allowed within the Sandbox.

Breach of any conditions imposed may be considered as a breach of the Sandbox Licence and may trigger regulatory and/or enforcement action by the Authority, which may also result in the termination of the person's participation in the Sandbox.

#### 3.6.3.5 *Test Criteria*

The test criteria will also be discussed during this stage on the basis of the information submitted during Application Stage. These criteria will be identified within the Sandbox Licence and will be used for the evaluation of the Participant's performance in the Sandbox.

#### 3.6.3.6 *Disclosures to consumers*

Authorised Participants will be required to disclose to prospective clients that they are operating under a Sandbox Licence and the conditions imposed by the MFSA. The disclosures shall also include guidance as to how the exit strategy will affect the client. Additional to the applicable disclosures, Participants would also need to disclose the respective risks pertaining to the innovation underlying the product/service offering and the compensation structure should clients suffer any losses or damages as a result of such risks.

The respective disclosures will also be discussed with the Applicant prior to their finalisation and identified within the Sandbox Licence.

### 3.6.3.7 Compensation Arrangements

In order to enhance consumer protection, it is being proposed that Sandbox Participants operating only with a Sandbox Licence will be obliged to contribute to a compensation arrangement for potential losses suffered by their respective consumers in case that the Participant fails to comply with its obligations or engages in misconduct. The following structures are being proposed:

i. **Option 1 - Consumer Protection Fund**

A Consumer Protection Fund ('the Fund') would be setup by the MFSA wherein Sandbox Participants will be required to contribute based on their projected revenue. These contributions may be either refundable or non-refundable and calibrated depending on the risk profile of the proposal and Participant during the Sandbox Lifecycle.

ii. **Option 2 - Guarantee**

This option is based on the imposition of a fixed guarantee that authorised firms will be required to pledge with a licensed financial institution. This guarantee will be removed after a stipulated period following the end of the Sandbox period, upon confirmation that it is no longer required.

iii. **Option 3 - Internal Arrangements**

Under this proposal, the Applicant proposes to the Authority the compensation arrangements they will provide to customers, which may, *inter alia*, include Professional Indemnity Insurance, holding an amount of regulatory capital, etc.

## Q8 What is your opinion on the proposals set out under Stage 3? Do you have any proposed alternative/s?

### 3.6.4 Stage 4 - Sandbox Testing Stage

#### 3.6.4.1 Close dialogue and individual guidance

Throughout the Sandbox Testing Stage, all Sandbox Participants will closely dialogue with the MFSA, through frequent reporting and semi-monthly meetings. The Participants will be closely monitored to ensure that they are adhering to the regulatory requirements applicable to them while operating within the conditions specified within the provisional authorisation. Additionally, the MFSA will monitor the tests being carried out as specified under the Sandbox Licence.

This close dialogue will be beneficial for both the Participants and the MFSA. As noted earlier, the Participants will have access to their respective Participant Development Lead. This Lead will act as a liaison between the Participant and the MFSA's supervisory experts in order to guide and support the Participant on regulatory and supervisory matters within the context of his proposal. Meanwhile, the MFSA would be in a better position to address risks, challenges and potential regulatory gaps which might be present as a result of the financial innovation. This would facilitate the formulation of the appropriate regulatory response, while providing Participants with the opportunity to build their regulatory and technical capacity.

#### 3.6.4.2 Sandbox regulatory tools

Additional to the individual guidance, the MFSA will have other regulatory tools at its disposal, namely toolkits, waivers and no enforcement action letters. These will be applied on a case-by-case basis at the discretion of the Authority, and as applicable by legislation.

i. **Toolkits**

The MFSa intends to provide Participants with regulatory and supervisory toolkits which may be used by the Participant and integrated within their operations. It is being proposed, that such toolkits shall consist of basic guidance on the respective legislation as well as templates of required policies which are necessary for entities to be able to operate. The Participant would then be entrusted to modify and enhance these policies to cater for the specificities of its business model.

ii. **Waivers**

The MFSa may also grant waivers to certain requirements, as afforded to by the applicable legislation and under defined conditions. Such waivers would only be granted on a case-by-case basis, and only if it is determined that the provision of such waivers would be without detriment to the ultimate consumer and required for the financial innovation to occur.

iii. **No enforcement action letters**

The MFSa may resort to the issuance of no enforcement action letters. Whilst noting that the Authority is cognisant that the Participant appears to be in breach of its regulatory and supervisory requirements, the letter would clearly state that no enforcement action will be taken provided that the circumstances are required for the financial innovation and/or mitigated by the financial innovation itself. Additionally, the Participant would also be required to (i) specify how risks are being mitigated and (ii) verify that it is operating within the conditions specified within the provisional authorisation and that the apparent breach is not detrimental to the ultimate consumer.

No enforcement action letters would only apply for the duration of the Sandbox testing Stage and only in relation to the actions specified within. The Authority will reserve the right to revoke any previously issued no enforcement action letters should it be evident that any conditions or considerations set out therein are not being met or complied with. The Authority may also revoke a no enforcement action letter in the case that it identifies further risks which could not have been foreseen when such letter was issued

It is also being proposed that all issued no enforcement action letters will be made available online to the public through the Sandbox website. No enforcement action letters that have been denied will also be made available to alert consumers to any potential regulatory gaps which are detrimental to the investor protection, market integrity and financial soundness.

It is noted that Sandbox Participants would still be subject to the applicable enforcement for any breach of any regulatory and supervisory requirements under the applicable framework, unless otherwise determined and communicated by the Authority.

#### 3.6.4.3 *Arbiter for Financial Services*

To further ensure effective investor protection, the MFSa is also proposing that clients of Sandbox Participants have recourse to the Office of the Arbiter for Financial Services for any complaint/s they might have.

## Q9

**What is your opinion on the proposals set out under Stage 4?  
Do you have any proposed alternative/s?**

### 3.6.5 Stage 5 - Sandbox Testing and Evaluation Stage

During this stage, whilst Participants will continue to provide their service, they will be required to provide a detailed report of the outcomes of the respective tests outlined within their Sandbox Licence, and what they intend to do following the Sandbox period. The analysis of this report will help the Authority to assess whether the Sandbox environment proved valuable for the specific product or service, or for the specific sector that the respective Participant operates in.

The report may be prepared jointly by the Authority and the Participant. The Authority will evaluate the success of the test, drawing on inputs provided by the latter.

#### **Q10 What is your opinion on the proposals set out under Stage 5? Do you have any proposed alternative/s?**

### 3.6.6 Stage 6 - Sandbox Exit Stage

At the end of the testing period, the Participant will initiate its transition outside the Sandbox. Depending on the test outcomes of the Sandbox Licence, it is envisaged that this may occur in either of four ways:

- i. Discontinuation of the financial innovation through the revocation of the provisional authorisation and expiration of the Sandbox Licence.
- ii. Extension for continuation inside the Sandbox through an extension of the Sandbox Licence.
- iii. Continuation outside the Regulatory Sandbox with certain restrictions through the granting of the applicable authorisation with certain post-licencing conditions while the Sandbox Licence is allowed to expire.
- iv. Continuation outside the Regulatory Sandbox without restrictions through the granting of the applicable authorisation while the Sandbox Licence is allowed to expire.

Irrespective of the chosen path, in order for the Participant to exit the sandbox in a controlled manner it would need to implement its exit strategy, which would have been discussed and agreed with the MFSA during application stage.

In the case of Participants holding only a Sandbox Licence, the exit strategy would also indicate the appropriate authorisation to be pursued in the event that the test was successful and that the appropriate legal framework has been identified. In the case of financial innovations which fall outside the scope of existing legislation, the Authority will determine, together with the Participant, the most appropriate way forward.

Furthermore, if the test is terminated prematurely by the Participant or the MFSA, owing to issues identified during the testing phase, the agreed exit plan comes into effect.

In any circumstance, the Participant will be required to implement measures to protect the interest of consumers and, where any consumer detriment arises, to take such remedial steps as considered appropriate.

#### **Q11 What is your opinion on the proposals set out under Stage 6? Do you have any proposed alternative/s?**

### 3.7 Other considerations

The MFSa intends, pursuant to *Pillar 4 - International Links*, to collaborate and build international relations with jurisdictions that have already set up a Regulatory Sandbox. Creating such links and FinTech Bridges will allow for knowledge sharing and allow authorised firms participating within the Sandbox the potential opportunity to connect to other international Regulatory Sandboxes. In this respect, the MFSa is already participating in the European Forum for Innovation Facilitators ('EFIF') and also intends to collaborate with other jurisdictions through the Global Financial Innovation Network ('GFIN'), which is a network of international financial services regulators working in tandem to support innovation in the financial services sector.

The MFSa will also be inviting persons that wish to make an innovative financial product or service available to consumers through the Sandbox to approach the Authority through its proposed Innovation Hub (further information will be subsequently released in the Consultation Document for *Pillar 2 - Ecosystem*) to discuss the respective proposals before applying for authorisation to participate in the Sandbox. Interested parties can engage the support of the MFSa through the Innovation Hub on potential regulatory implications at an early stage of their proposition.

Through the Innovation Hub, the Authority also intends to set up partnership programmes wherein it will encourage the willingness of incumbents to partner up with other entities, including those wishing to provide a product or service from within the Regulatory Sandbox.

**Q12 Do you think there are any other considerations which should be taken into account?**

# Chapter 4

## Regulatory and Supervisory Technology



## 4 Regulatory and Supervisory Technology

### 4.1 RegTech

The MFSa is advocating RegTech solutions to improve regulatory processes with the aim of helping authorised entities to comply with greater certainty and more efficiently to regulatory and supervisory requirements. The Authority is seeking views of how it could support the development and adoption of RegTech in order to facilitate regulatory compliance, specifically whether there are any challenges that providers of RegTech face when providing their solution to financial services firms and whether certain regulations or rules exist that restrict the development and adoption of RegTech solutions.

The MFSa is proposing to set up a framework for the certification of RegTech solutions that correctly comply with the respective legislation requirements they set out to achieve. Persons wishing to make use of such solution can refer to such certificate, verifying that the respective version of the solution has been analysed and certified by the MFSa and is in fact compliant. Any amendments or updates to the solution have to be reported to the MFSa for subsequent verification in order for the Authority to issue a certificate for the latest version.

This certification will benefit all stakeholders, given that the Authority would be proactively determining that certified solutions comply with the necessary legislative requirements, whilst at the same time encouraging providers to adopt such solutions. This will also assist both the authorised person to comply with the necessary requirements and the Authority during its on-going supervisory work.

Persons developing RegTech solutions are also encouraged to apply for testing within the Regulatory Sandbox, which will undoubtedly prove as a valuable space for the testing of such solutions.

### 4.2 SupTech

The MFSa is also actively working on harnessing the benefits of technology and digitisation and embracing regulatory innovation itself through investment in SupTech, as outlined in the Vision 2021 ([link](#)).

Persons that may be developing SupTech solutions are invited to approach the MFSa in order to gauge the areas of interest where SupTech is being applied. The MFSa will set up an online form through its FinTech page for this purpose.

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**Q13** **What are your views on the proposals presented?**  
**Do you think regulatory certification of RegTech solutions will be beneficial towards their development and adoption by financial services providers?**  
**Do you foresee any risks or challenges?**

# Chapter 5

## Conclusion



## 5 Conclusion

The MFSA is seeking feedback from the industry before proceeding with detailed proposals on the implementation of the regulatory initiatives presented in this Consultation Document.

The consultation is open to the public until 30 August 2019. Industry Participants and interested parties are invited to send their responses through an online survey, developed specifically for this purpose, by not later than the said date. The survey may be accessed through the following link:

[Pillar-1-Regulations](#)



While interested parties are urged to submit their feedback through the online survey, any queries in relation to this Consultation Document should be directed to [fintech@mfsa.com.mt](mailto:fintech@mfsa.com.mt).

Additionally, the MFSA, in collaboration with FinanceMalta, will be holding a Conference and Workshop vis-à-vis this Consultation Document on 30 July 2019. Further details may be found on the MFSA FinTech page ([link](#)).

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