

MFSA FinTech Strategy

Feedback Statement to the Consultation Document on Pillar 1 - Regulations

Ref: 10-2019

Date: 27 January 2020

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1 Introduction

On 15 May 2019, the Malta Financial Services Authority ('MFSA' or 'the Authority') issued the [MFSA FinTech Strategy](#) ('the Strategy') which presented the MFSA's vision "*to establish Malta as an international FinTech hub which supports and enables financial services providers to infuse technology in product and service offerings to drive innovation*".

In order to achieve this vision, the Authority is delving into further detail with respect to each of the identified six pillars, starting with a [Consultation Document](#) regarding Pillar 1 - Regulations ('Consultation Document').

The Consultation Document, which was issued on 4 July 2019, proposed (i) the MFSA FinTech Regulatory Sandbox ('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 on the other strategic objectives presented under Pillar 1 of the FinTech Strategy was also provided. Following a workshop organised by FinanceMalta in collaboration with the MFSA, the consultation period closed on 30 August 2019.

The MFSA received 18 responses from a wide range of industry participants and interested parties including regulated firms, associations, technology providers, law firms and consultancy firms.

This Feedback Statement summarises the feedback the Authority received and sets out the MFSA's response and position thereto. The contents herein should be read in conjunction with the Consultation Document mentioned above.

2 Feedback Statement

2.1 Overall Feedback

What are your overall views on Pillar 1 - Regulations?

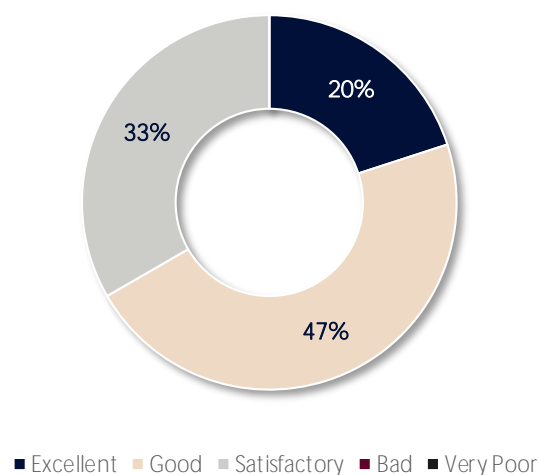


Figure 1 - Overall Views

2.1.1 Feedback Received

Respondents reacted positively towards the Authority’s proposals in respect to Pillar 1 - Regulations of the MFSA FinTech Strategy, overall being viewed as excellent (20%), good (47%) and satisfactory (33%), as presented in Figure 1.

As expected, most of the feedback focused on the Sandbox, given that it is the main strategic objective presented in the Consultation Document. In this respect, building on MFSA’s efforts to position Malta as an international FinTech Hub, respondents generally

highlighted that the Sandbox is a much-needed initiative to foster technological developments occurring within the financial services industry whilst ensuring effective investor protection, market integrity and financial soundness. Respondents emphasised that Malta’s relatively small size and diverse demographics can provide FinTech providers with the opportunity to develop their solution effectively.

Respondents expect that, through its initiatives such as the Sandbox, the Authority should become an enabler of innovation by supporting market participants to develop their technologically-enabled financial innovation. In this respect, respondents argued that while effective and efficient implementation of the mentioned strategic objectives is necessary, execution needs to follow quickly.

Other aspects of the Consultation Document were also discussed. These, along with the respective elements of the Sandbox, will be dealt with in further detail in the subsequent sections of this Feedback Statement.

2.1.2 MFSA Position

The MFSA welcomes the feedback received from the industry. The Authority understands the concerns submitted and shall endeavour to implement the initiatives presented to foster technology-enabled financial innovation, while ensuring investor/consumer protection, market integrity and financial soundness.

In view of the above considerations and the feedback received, the MFSA is of the opinion that certain amendments are required to the overall structure of the proposed Sandbox. These changes will be delved into further detail in the subsequent sections of this Document and ultimately reflected in the final Rule as proposed in the annex to this Feedback Statement.

Moreover, the MFSA will also take on board the constructive feedback received in respect to the other strategic objectives presented under Pillar 1, namely RegTech, SupTech, Proportionality and Smart Regulations.

2.2 The MFSA FinTech Regulatory Sandbox

2.2.1 Objectives

Question 1 - Do you agree with the objectives of the Sandbox?

2.2.1.1 Feedback Received

As illustrated in Figure 2, all respondents agreed with the objectives of the Sandbox as presented in the Consultation Document. Respondents further commented that the objectives are comprehensive and will allow the MFSA to strike a balance between fostering innovation and safeguarding the financial services market. Additionally, the Sandbox would provide the MFSA with the necessary knowledge to identify and mitigate potential regulatory gaps in existing legislation.

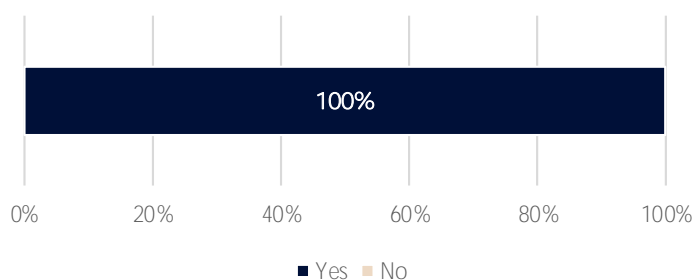


Figure 2 - Sandbox Objectives

This notwithstanding, respondents emphasised that the proposed objective of '*fostering innovation*' should generate overall consumer and market-wide benefits such as *inter alia* improved competition, enhanced quality, security, user experience, financial inclusion as well as the development of new market niches.

With respect to '*enhancing firms' understanding of regulatory expectations*' proposed objective, one respondent noted that the Authority should work alongside professional advisors who may have already gained experience and knowledge in FinTech and in developing such FinTech solutions.

2.2.1.2 MFSA Position

Based on the feedback received and with the intention of clearly defining the underlying objectives of the Sandbox, the Authority has amended the objectives, as follows:

1. Innovation

The Sandbox will provide for a regulatory environment allowing technologically-enabled financial innovation - new business models, applications, processes or products - to operate within the financial services market.

2. Sustainability

Through close dialogue, the MFSA will be monitoring Sandbox participants ('Participants') to observe whether their innovations truly offer value to the consumer and the wider financial services sector, whilst ensuring consumer/investor protection, market integrity and financial soundness.

3. Certainty

The Sandbox will enhance legal certainty within the financial services market as it provides both Participants and the MFSA the space to determine the appropriate requirements under the applicable frameworks.

4. Knowledge

Through collaboration with Participants, the Authority will have the opportunity to enhance its capacity in assessing the regulatory implications and gaps of such solutions, and identify the appropriate response, as necessary.

Further to the first point raised by respondents, the above objectives clearly define the aim of the Sandbox, that of supporting sustainable financial innovation, ensuring regulatory certainty and promoting knowledge sharing.

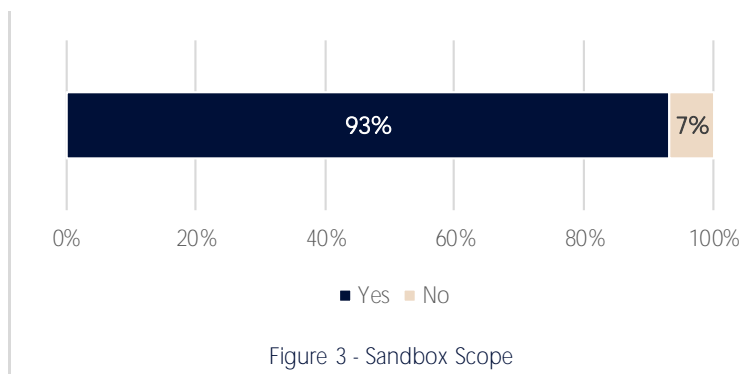
Moreover, it is noted that while consumer and market wide benefits are not included as an objective, they are catered directly, as one of the Sandbox eligibility criteria, and indirectly, through the '*sustainability*' objective.

2.2.2 Scope and Applicability

Question 2 - Do you agree with the scope of the Sandbox?

2.2.2.1 Feedback Received

The vast majority of respondents (93%), as illustrated in Figure 3, agreed with the scope of the Sandbox, mentioning that it "appears to be broad enough to encompass various types of FinTech" while still retaining control through the ongoing monitoring



of these innovations. Respondents highlighted concerns in relation to the term 'technologically-enabled financial innovation' as being too restrictive, thus potentially limiting the scope of the Sandbox to innovations which are only technologically-driven.

Recommendations were put forward mainly in relation to broadening the scope of the Sandbox to capture new innovations which may (i) not be dependent on technology or (ii) use existing technology.

One respondent noted that innovation should also reflect significant improvements to the related products/services, processes or business models. Furthermore, innovation which has a negative impact or a counter-intuitive result to the customer or market should not be interpreted as innovation.

2.2.2.2 MFSA Position

The MFSA welcomes the feedback received and notes the above concerns. However, as proposed within the Consultation Document, the scope of the Sandbox is '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, and thus will remain unchanged. Indeed, the Authority is amending the 'innovation' eligibility criterion to better reflect the latter scope of the Sandbox.

Additionally, as noted in Section 2.2.1.2 of this Feedback Statement, the MFSA reiterates that one of the objectives of the Sandbox is to support sustainable financial innovation which offer an overall benefit to the ultimate consumer and the market. This is also reflected through the 'benefit' eligibility criterion.

2.2.3 Legal Framework

Question 3 - Which option would you prefer and why?

2.2.3.1 Feedback Received

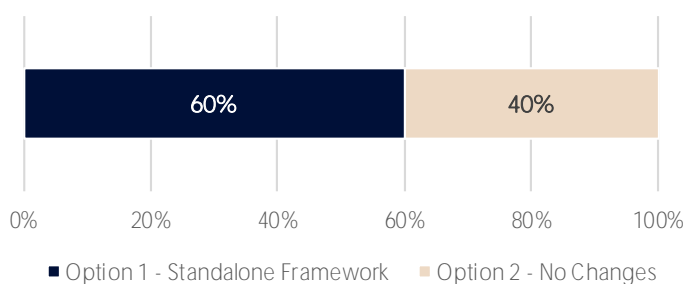


Figure 4 - Legal Framework

The two proposed approaches to establish and implement the Sandbox received mixed views from respondents.

On one hand, respondents who preferred a standalone legal framework (60%) argued that this approach would be more holistic. Respondents commented that a standalone framework will

adequately determine the powers of the Authority within the Sandbox and the regulatory obligations of its Participants. Concerns were also raised in relation to the current framework potentially focusing more on authorisation rather than testing the viability of innovative solutions within the Sandbox. One respondent noted that, considering FinTech as being a highly dynamic sector and an ever-changing concept, making amendments to a standalone framework would be less burdensome and would avoid direct changes to the MFSA Act or other existing legislation.

On the other hand, the remaining respondents (40%) maintained that the existing sector-specific legislation and the powers under the MFSA Act are sufficient to cater for the establishment and implementation of the Sandbox. Moreover, these respondents argued that the Sandbox is necessary, and the Authority cannot afford delaying its implementation.

2.2.3.2 MFSA Position

Considering the feedback received and the powers afforded to the Authority under the MFSA Act, the Authority intends to issue a Rule which establishes the MFSA FinTech Regulatory Sandbox, as annexed to this Feedback Statement.

Nonetheless, a standalone legal framework will be implemented should the Authority determine that such a framework is required on the basis of (i) experience and knowledge gained through the Sandbox and (ii) the needs of the market. It should be noted that the MFSA shall review the Sandbox periodically to evaluate and determine whether the Sandbox is achieving its intended objectives.

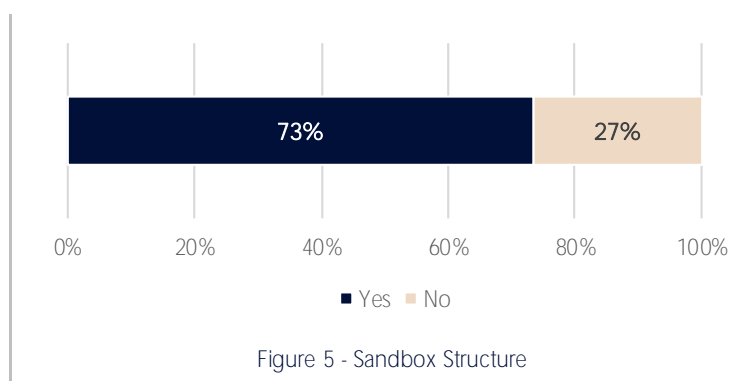
2.2.4 Sandbox Structure

Question 4 - Do you think these structures (bi-annual cohorts and special purpose cohorts) allow for the proper functionality of the Sandbox?

2.2.4.1 Feedback Received

As illustrated in Figure 5, the majority of respondents (73%) reacted positively towards the proposed cohort structure, commenting that this provides a streamlined system of operation.

Nevertheless, when compared to an 'open application' Sandbox structure, concerns in relation to flexibility arose, in so far that Applicants and Participants would be limited to the bi-annual cohort structure, instead of having access to the Sandbox when required. Respondents argued that an 'open application' structure would be more beneficial.



2.2.4.2 MFSA Position

On the basis of the feedback received, the MFSA understands that an ‘open application’ Sandbox would provide greater flexibility and is thus of the view that such a structure would be more beneficial to both Applicants and Participants. Therefore, the MFSA will adopt such a structure while retaining the possibility to focus on specific themes, including *inter alia* special purpose cohorts, in order to cater for specific FinTech solutions or challenges as may be proposed by the Authority.

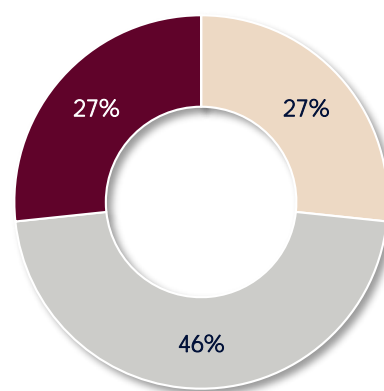
2.2.5 Sandbox Lifecycle

Question 5 - What is your opinion on the Sandbox Lifecycle and its timelines?

2.2.5.1 Feedback Received

The Sandbox Lifecycle (‘the Lifecycle’) brought about a range of opinions as illustrated in Figure 6. It is noteworthy to mention that respondents recognised the MFSA’s intention to clearly define the expected stages and timeframes of the Lifecycle.

Nonetheless, respondents highlighted concerns on (i) the potentially restrictive timeframes, and (ii) the length of the pre-testing phase of the proposed Lifecycle (which includes, the Proposal, Selection and Application stages).



■ Excellent ■ Good ■ Satisfactory ■ Bad ■ Very Poor

Figure 6 – The Sandbox Lifecycle

In relation to the pre-testing phase, most notably the Application Stage, respondents proposed shortening this phase in view that Applicants should have all the necessary information required. In Addition, it was suggested that feedback is provided to Applicants following assessment by the Sandbox Selection Board (hereinafter referred to ‘Sandbox Committee’). One respondent further suggested that an appeal system should be adopted whereby rejected Applicants may appeal the Authority’s decision.

Suggestions were also made for the Application Stage and the testing phase of the proposed Lifecycle (which includes, the Testing, Testing & Evaluation, and Exit stages) to run in parallel given that the MFSA may use the testing phase to better understand the business model of the Applicant and thus determine the applicable framework.

Finally, in relation to the testing phase, respondents suggested that the Testing Stage is prolonged to allow for proper development and maturity of the FinTech solutions being tested within the Sandbox.

2.2.5.2 MFSA Position

The Authority will restructure the Lifecycle to better suit the needs of Applicants and Participants, particularly when considering that an 'open application' structure will be adopted. It is noted that the Authority will always communicate the outcome of any decision taken to Applicants and/or Participants.

Additionally, while the timeframes presented within the Consultation Document were indicative, Applicants which are selected to proceed to the Sandbox will be able to propose either (i) a six-month, or (ii) a one-year testing phase, subject to this being agreed upon with the MFSA during the Application Stage.

2.2.6 Stage 1 - Proposal Stage

Question 6 - What is your opinion on the proposals set out under Stage 1?

2.2.6.1 Feedback Received

As depicted in Figure 7, the majority of respondents reacted positively towards the proposals set out under Stage 1 of the Lifecycle, rating them as excellent (13%), good (40%), satisfactory (40%) and bad (7%). Nonetheless, the main concern related to the length of the two-month window allocated to this Stage.

Respondents commented that the Authority should consider shortening the Proposal Stage given that Applicants would be able to submit the necessary information in a shorter period, provided that ample information is made publicly available in advance by the Authority, including, *inter alia*, the eligibility criteria and the proposal form.

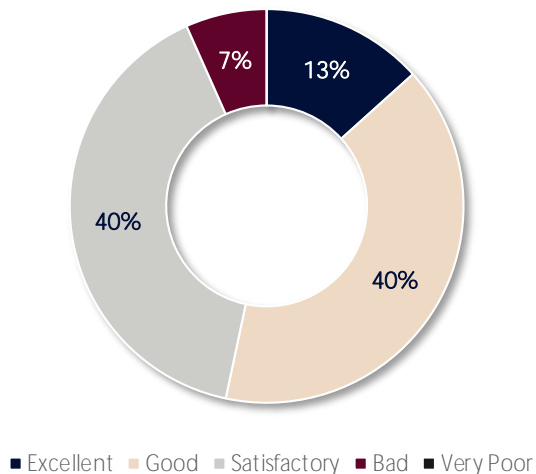


Figure 7 – Stage 1 | Proposal Stage

2.2.6.2 MFSA Position

As mentioned in the previous section, in view that an ‘open application’ structure is being adopted, Applicants will be able to submit their proposal to the Authority at any time. Therefore, upon an Applicant submitting its complete proposal, the Proposal Stage would initiate with the MFSA assigning a Participant Development Lead (‘PDL’), who would be responsible for the review of the proposal against the scope and applicability of the Sandbox. Subsequently, the proposal, together with the respective recommendation, will be

presented to the Sandbox Committee. Additionally, the Authority may also request (i) further documentation from Applicants, and (2) a preliminary meeting with the Applicant at this Stage. This notwithstanding, it is noted that further information may be requested by the MFSA during the entire Lifecycle.

2.2.7 Stage 2 - Selection Stage

Question 7 - What is your opinion on the proposals set out under Stage 2?

2.2.7.1 Feedback Received

The proposals set out under the Selection Stage were well-received by the majority of respondents, as indicated by Figure 8. With regard to the ‘innovation’ eligibility criterion, respondents highlighted concerns similar to those presented in Section 2.2.2 of this Feedback Statement. Certain respondents disagreed with the requirement that a proposal has to be “significantly different from current solutions available in the marketplace” and that it must “make use of emerging technologies or represent a significant scale-up in existing technologies deployed in the market.” In this regard, such respondents were concerned that the Sandbox would be limited to innovations which are only technologically-driven.

Other respondents recommended the inclusion of another eligibility criterion which caters for the requirement that Applicants should have a clear exit strategy at Proposal Stage. Such a requirement would consider the potential risks to customers and to the market arising from Participants, should they need to exit the market in a timely and orderly manner.

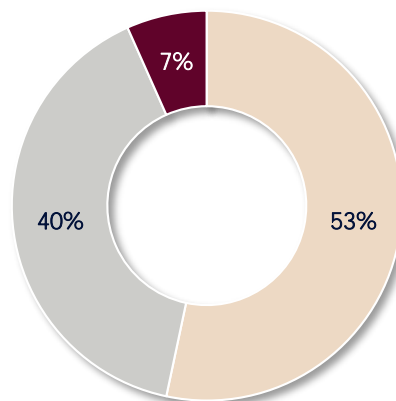
One respondent also recommended that the Sandbox Committee should also consist of external members to leverage on broader expertise and experience, such as officials from the Malta Digital Innovation Authority ('MDIA') and the Financial Intelligence Analysis Unit ('FIAU').

2.2.7.2 MFSA Position

As highlighted in Section 2.2.2 of this Feedback Statement, the MFSA notes that the Sandbox will be open to all proposals which fall within scope and applicability of the Sandbox.

With regard to the inclusion of the exit strategy as one of the eligibility criterion, the Authority notes that the exit strategy will be discussed and agreed with the MFSA during Application Stage. This notwithstanding, an Applicant should present at Proposal Stage a clear exit strategy catering for a discontinuation scenario.

Lastly, the Sandbox Committee, which will be established as a Sub-Committee to the MFSA Executive Committee, will only include internal officials possessing cross-sectoral expertise and will be responsible to determine the appropriate way forward.



■ Excellent ■ Good ■ Satisfactory ■ Bad ■ Very Poor

Figure 8 - Stage 2 | Selection Stage

2.2.8 Stage 3 - Application Stage

Question 8 - What is your opinion on the proposals set out under Stage 3?

2.2.8.1 Feedback Received

As illustrated in Figure 9, Stage 3 of the Lifecycle received varied views. The main concerns emanated from the duration of the Application Stage, with several respondents recommending that the MFSA should shorten this Stage so that Applicants may proceed to test their solution

within the financial services market. As outlined in Section 2.2.5 of this Feedback Statement, respondents also proposed that the Application Stage and the Testing phase run in tandem.

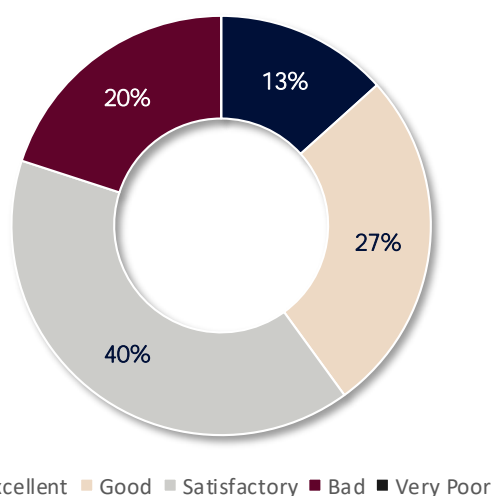


Figure 9 - Stage 3 | Application Stage

Respondents also sought further clarity on how the MFSA intends to apply the concept of 'provisional authorisation' as outlined in the Consultation Document. In this respect, respondents posed concerns regarding the context of providing and/or performing their activity in other EU jurisdictions as afforded under current European financial services legislation.

One respondent, whilst acknowledging that PDLs will be beneficial for selected Applicants and Participants to navigate through the entire Sandbox Lifecycle, highlighted that this may be very onerous on the MFSA. In this regard, it was argued that such PDLs would need to possess significant technical cross-sectoral expertise as they will be required to provide regulatory guidance both during this Stage and the stages thereafter.

With respect to the Compensation Arrangements, the majority of respondents preferred Option 3, which calls for Applicants to propose their own internal compensation arrangements. Such respondents agreed that internal arrangements would offer the required protection while being adequately proportional to the Participant's nature, scale and complexity. Respondents argued that a Consumer Protection Fund, as proposed under Option 1, would be difficult to administer and to determine the adequate level of contribution required, whilst also being quite

onerous on certain Participants. It was also argued that while Option 2 - Guarantee would provide adequate cover, start-ups would find major difficulties in obtaining such guarantees, and that invoking of such guarantees is a cumbersome and time-consuming process.

2.2.8.2 MFSA Position

In view that the Sandbox will be implemented under the MFSA Act as noted in Section 2.2.3.2 of the Feedback Statement, and that the Sandbox shall be open to all FinTech providers, Participants will not be granted with a *'provisional authorisation'* as initially proposed within the Consultation Document. Instead, where a selected Applicant clearly falls within financial services legislation currently in force in Malta, the said Applicant would require authorisation by the Authority under the applicable law. On the other hand, those selected Applicants who do not fall (i) within the regulatory perimeter of the Authority, or (ii) clearly within financial services legislation currently in force in Malta, will be required to satisfy the requirements as set out in the final publication of the Sandbox prior to proceeding to the testing phase.

As indicated in Section 2.2.6.2 of this Feedback Statement, assignment of PDLs will occur during the Proposal Stage and not during this Stage as initially proposed within the Consultation Document. Other experts within the MFSA will also support PDLs on regulatory matters specific to an Applicant and/or a Participant. This highlights the Authority's commitment towards enhancing its competencies when dealing with such FinTech solutions.

On the basis of the feedback received, the MFSA will proceed with *'Option 3 - Internal Arrangements'*. In this respect, should the Authority determine that such arrangements are required, they shall be imposed as conditions required during the testing phase. Additionally, during this Stage the Applicant and the MFSA will agree on other matters, such as *inter alia* (i) the duration of testing phase, (ii) the testing objective/s and performance measure/s, (iii) the exit strategy, and (iv) the respective disclosures required.

2.2.9 Stage 4 - Testing Stage

Question 9 - What is your opinion on the proposals set out under Stage 4?

2.2.9.1 Feedback Received

As illustrated in Figure 10, the majority of respondents acknowledged that the proposals under this Stage were good (53%). In this respect, generally it was argued that the proposed regulatory tools together with ongoing monitoring, close dialogue and regulatory guidance available during the entire testing phase are vital for the development of the solutions being tested within the Sandbox.

As outlined in Section 2.2.5 of this Feedback Statement, respondents requested longer testing periods for Participants, in order to allow for the proper development and maturity of the Fintech solutions being tested.

With respect to the Sandbox regulatory tools, one respondent requested further clarity regarding the No Enforcement Action Letters (hereinafter referred to No Action Letters'). Furthermore, this respondent also noted that it should be clearly stated that such letters only address regulatory action which may be taken by the MFSA and do not preclude customers from taking legal action against the Participant.

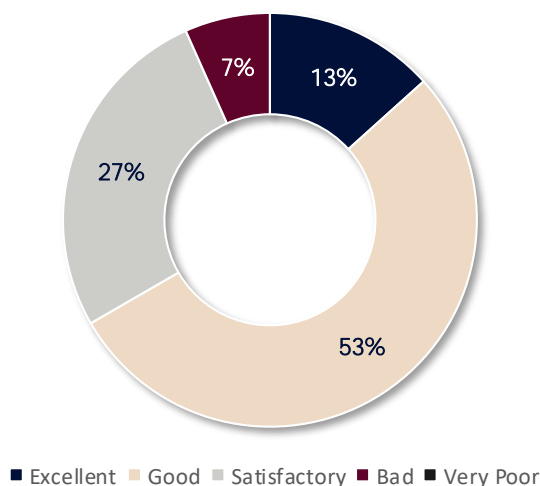


Figure 10 - Stage 4 | Testing Stage

Finally, respondents argued that the inclusion of the Arbiter for Financial Services “*goes directly against the whole spirit and culture of experimentation and testing*” advocated by the Regulatory Sandbox. Such respondents highlighted that the additional conditions and transparency requirements applicable to Participants should be sufficient in ensuring investor/consumer protection.

2.2.9.2 MFSA Position

On the basis of the feedback received, and as indicated in Section 2.2.5 of this Feedback Statement, selected Applicants will be able to propose either (i) a six-month, or (ii) a one-year testing phase, which will need to be agreed upon with the MFSA during the Application Stage.

In relation to No Action Letters, should the Authority determine, either during the Application Stage and/or during the testing phase, that such a regulatory tool is required, the letter would clearly indicate the Authority’s position and conditions applicable to the Participant for it to operate within the Sandbox.

It is noted that clients of Participants authorised by the MFSA under sector-specific financial services law will have recourse to the Office of the Arbiter for Financial Services for any complaint/s they might have, as afforded to them by the applicable law.

2.2.10 Stage 5 - Testing & Evaluation Stage

Question 10 - What is your opinion on the proposals set out under Stage 5?

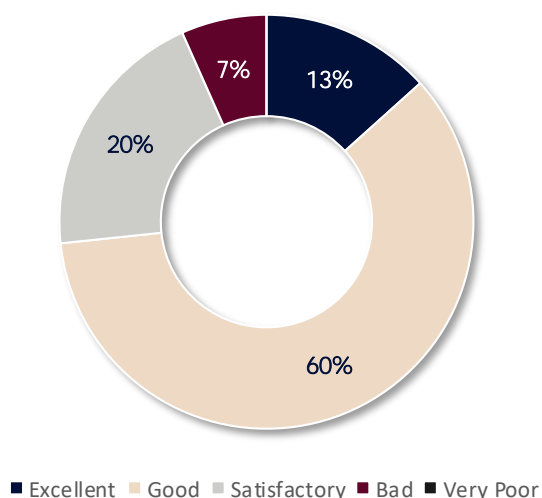


Figure 11 - Stage 5 | Testing & Evaluation Stage

2.2.10.1 Feedback Received

The proposals set under Stage 5 of the Sandbox Lifecycle were positively received by the majority of respondents. Respondents agreed with the necessity to prepare and provide a detailed report of the outcomes of the respective tests to the Authority.

In line with previous feedback received, respondents recommended that this Stage should be made longer as it would provide further insights during detailed discussions between the Participants and the MFSA.

Respondents also recommended that the Authority commits to providing written feedback in relation to the outcomes of the tests being carried out. Moreover, one respondent suggested that, apart from publishing a list of the Participants and their innovative solution, the MFSA should publish progress reports and results of the innovations being tested and the respective lessons learned.

2.2.10.2 MFSA Position

While the MFSA has amended the Sandbox Lifecycle, the Evaluation Stage will remain a one-month period during the six-month or one-year testing phase. During this Stage, while Participants will continue to operate within the Sandbox, they will be required to submit a detailed report outlining (i) the performance of the FinTech solution, on the basis of the agreed testing objective/s and performance measure/s, and (ii) what they intend to do following the Sandbox period. The Authority shall assess this report in addition to the feedback gathered during the Testing Stage and determine the appropriate exit strategy.

With the aim to promote transparency and share the knowledge gained through the Sandbox, the MFSA will publish on its website a list of the Participants together with a yearly report outlining aggregate overview of the lessons learnt.

2.2.11 Stage 6 - Exit Stage

Question 11 - What is your opinion on the proposals set out under Stage 6?

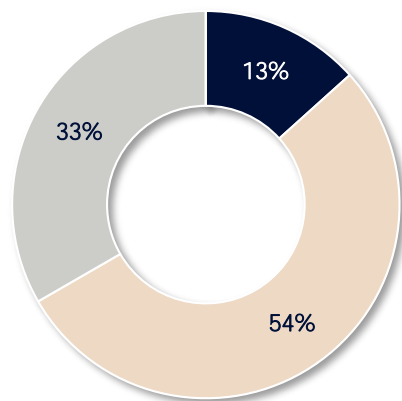
2.2.11.1 Feedback Received

Respondents reacted very positively to the Exit Stage of the Sandbox Lifecycle, as represented in Figure 12. The general feedback commended the MFSA's holistic approach towards the possible outcomes and paths that the solutions being tested might take following the end of the Sandbox testing period. Respondents highlighted the need for the Authority to guide Participants in their transition outside of the Sandbox. Moreover, it was suggested that the MFSA should consider providing a platform which Participants may utilise to further develop their solution.

2.2.11.2 MFSA Position

The MFSA welcomes the feedback received and reiterates that the Authority will provide regulatory guidance to all Participants exiting the Sandbox.

It is noted that complementing the Sandbox, the Authority is also in the initial stages of developing its FinTech Innovation Hub under Pillar 2 of the FinTech Strategy. This initiative will further assist Participants and other FinTech providers to develop their solution.



■ Excellent ■ Good ■ Satisfactory ■ Bad ■ Very Poor

Figure 12 - Stage 6 | Exit Stage

2.2.12 Other Considerations

Question 12 - Do you think there are any other considerations which should be taken into account?

2.2.12.1 Feedback Received

Respondents supported the proposals presented by the Authority in this Section. Generally, it was emphasised that fostering relationships and collaborating with international financial services regulators, particularly those that have already established a Regulatory Sandbox, was crucial. The MFSA’s intention to join the Global Financial Innovation Network (‘GFIN’) was well-received, with respondents stating that this would be a beneficial opportunity for both the MFSA and Participants to connect with other international regulatory sandboxes.

In addition, respondents reiterated the importance of partnership programmes and suggested that the MFSA itself should invite key stakeholders such as, *inter alia*, credit institutions, financial institutions, prospective investors, technology providers and other incumbents to encourage collaboration.

Finally, certain respondents voiced their concern regarding potential Sandbox participants failing to obtain access to banking services. Respondents highlighted that some banks have been withdrawing from offering banking services to some types of customers. Consequently, certain FinTechs might be unable to conduct their tests in the Regulatory Sandbox as initially planned.

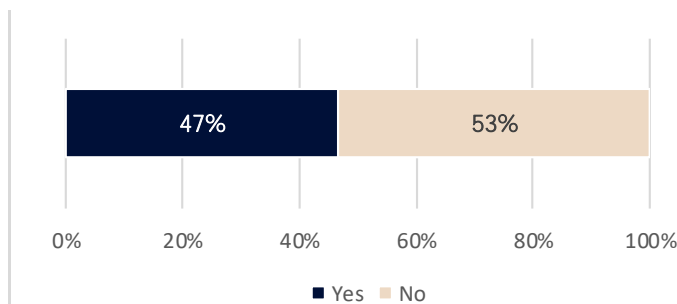


Figure 13 - Other Considerations

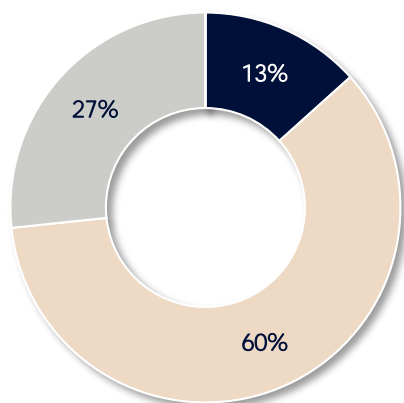
2.2.12.2 MFSA Position

The MFSA welcomes the feedback received and reiterates that it will continue working to implement the proposed objectives with respect to collaborating with international bodies while noting that it has already started preliminary work to join the GFIN, pursuant to *Pillar 4 - International Links* of the MFSA FinTech Strategy. Furthermore, as proposed in *Pillar 2 - Ecosystem*, it is reiterated that the Authority is in the initial phases of developing the necessary considerations to subsequently implement the FinTech Innovation Hub, with the objective to further foster sustainable innovation.

With respect to FinTech providers failing to obtain access to banking services, the Authority notes that it has, together with the FIAU, issued a joint [Guidance Document for Credit Institutions, Payment Service Providers and Electronic Money Institutions opening accounts for FinTechs](#), intended to assist such institutions to acquire a better understanding of the risks of any such prospective customers active in technology-reliant areas, prior to servicing them.

2.3 RegTech

Question 13A - 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?



■ Excellent ■ Good ■ Satisfactory ■ Bad ■ Very Poor

Figure 14 - RegTech Proposals

2.3.1 Feedback Received

Respondents reacted positively towards the proposals presented by the Authority under RegTech, as illustrated in Figure 14, stating that this is of “*fundamental importance*” in increasing digitalisation and automation to facilitate compliance with regulatory reporting requirements of authorised entities.

All respondents clearly noted that regulatory certification of RegTech solutions will be beneficial towards their development and adoption by financial

services providers. Albeit, concerns were posed in respect of how the MFSA envisages this certification to be carried out.

Respondents suggested that a tailored certification regime should be developed to allow for proportionality whilst at the same time giving comfort on the underlying technology itself. One respondent further suggested that the Sandbox would provide the necessary space for the MFSA to learn about such solutions. The main concern highlighted related to the frequency within which such providers update their solutions. Respondents argued that it would be very onerous for the MFSA to certify each update, given that such solutions release constant updates.

Moreover, respondents also recommended the inclusion of other external parties and Authorities, *inter alia*, the MDIA.

2.3.2 MFSA Position

While welcoming the feedback received, the MFSA wishes to clarify that this concept is still in its initial phases. On that note, the MFSA shall develop this concept further through discussions with all the necessary stakeholders and through obtaining a better understanding of such solutions through the Sandbox.

The MFSA looks forward to receiving additional feedback in relation to this concept once further information and proposals are issued in relation thereto.

2.4 SupTech

Question 13B - Do you think there are any other considerations that the Authority should take into account with respect to SupTech?

2.4.1 Feedback Received

Respondents acknowledged the MFSA's efforts in embracing technological innovation and investing in SupTech itself. In this respect, respondents emphasised that the regulators of the future would need to be at the forefront of technological innovation to be able to keep up the pace of market players.

Respondents suggested that the MFSA implements systems that interface with other competent authorities, as well as authorised entities. RegTech and SupTech should be complementary systems and fundamental for the management of regulatory risk for both market players and the MFSA through real-time monitoring.

Respondents also reiterated that the Regulatory Sandbox would be a good opportunity for the MFSA to assess the viability of SupTech solutions through the analysis of their testing.

2.4.2 MFSA Position

The MFSA welcomes the industry's feedback and positive response and looks forward to embrace digitalisation in its processes through SupTech.

In the meantime, as proposed in the Consultation Document, the Authority will be setting up an online form through its FinTech webpage, inviting parties developing SupTech solutions to approach the MFSA in order to gauge the areas of interest where SupTech is being applied.

2.5 Proportionality

Do you think there are any other considerations that the Authority should take into account with respect to the Proportionality principle?

2.5.1 Feedback Received

Certain respondents stated that the principle of proportionality should be a top priority in order to encourage start-ups to grow and develop in the FinTech space. FinTech is making way for "*leaner organisations*", and thus certain principles in current regulatory frameworks should be adopted on a proportional basis in this respect.

Moreover, respondents emphasised that the principle of proportionality is essential towards achieving the objectives of the MFSA FinTech Regulatory Sandbox. Furthermore, respondents also highlighted that the Sandbox, as a testing environment, should also provide a space where Participants are only subject to certain conditions proportionate to their nature, scale and complexity.

2.5.2 MFSA Position

The MFSA acknowledges the feedback received and notes, as outlined in the Consultation Document, its intentions to continuously apply the principle of proportionality as provided in current financial services legislation within the context of authorisation and supervision of such entities.

2.6 Smart Regulations

Do you think there are any considerations that the Authority should take into account with respect to making regulatory reporting requirements machine-readable and executable?

2.6.1 Feedback Received

With respect to smart regulations, respondents commented that this exercise should not be an isolated instance of digitalising part of a process but should reflect a cohesive approach throughout the authorisation and supervisory processes.

Moreover, respondents highlighted that smart regulations could be fostered with a consistent approach and synergies between RegTech and SupTech solutions applied by the MFSA and its authorised persons, respectively. One respondent suggested that consultation with the industry is crucial in this respect.

2.6.2 MFSA Position

The MFSA notes the suggestions and initiatives put forward by the respondents and will be taking these into consideration when delving further into this proposal.

3 Way Forward

The MFSA will continue to focus its efforts towards the implementation of the strategic objectives presented within Pillar I, namely the MFSA FinTech Regulatory Sandbox. In this respect, the Authority has published the proposed MFSA Rule establishing the MFSA FinTech Regulatory Sandbox, as annexed to this Feedback Statement. This Rule is open for consultation to the public until 7 February 2020. Industry participants and interested parties are invited to send their feedback to fintech@mfsa.mt by not later than the said date.

Following this consultation process, the Authority intends to launch its FinTech Regulatory Sandbox with the publication of the finalised Rule and introduction of the online form which will enable interested parties to submit their proposals.

Any comments or queries in relation to this Feedback Statement should be directed to: fintech@mfsa.mt

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MFSA RULE X OF 2020
THE MFSA FINTECH REGULATORY SANDBOX

THIS PROPOSAL IS NOT BINDING AND IS SUBJECT TO CHANGES AND REVISIONS FOLLOWING REPRESENTATIONS RECEIVED FROM INTERESTED PARTIES. IT IS IMPORTANT THAT PERSONS INVOLVED IN THE CONSULTATION BEAR THESE CONSIDERATIONS IN MIND.

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Title 1 General Scope and High-Level Principles

Section 1 Legal Basis

RX-1.1.1 In terms of Article 16(2)(a) of the MFSa Act, the Malta Financial Services Authority, as established under Article 3 of the Act, may issue and publish Rules regulating the procedures and duties of persons licensed or authorised by it, or falling under its regulatory or supervisory functions.

RX-1.1.2 The Authority may amend or revoke such Rules and any amendment or revocation thereof.

RX-1.1.3 This Rule is being issued in terms of Article 16(2)(a) of the Act.

Section 2 Definitions

RX-1.2.1 For the purposes of this Rule, the definitions identified under RX-1.2.2 should be read in conjunction with the provisions of the MFSa Act and any other law administered by the Authority for the time being in force in Malta.

RX-1.2.2 In the event that any of the definitions contained hereunder conflict with a definition under the MFSa Act or any other law administered by the Authority for the time being in force in Malta, the definitions set out in the Act or in any other such law shall prevail, unless otherwise specified herein.

'FinTech' means technologically-enabled financial innovation that could result in new business models, applications, processes or products with an associated material effect on financial markets and the provision of financial services.

'FinTech Service Provider' means a person who is duly licensed or otherwise authorised to provide or who intends to provide a service/s requiring a licence or other authorisation in terms of applicable financial services legislation currently in force in Malta and who utilizes FinTech in its operations.

'FinTech Solution' or 'Solution' means a specific utilisation of FinTech.

'FinTech Supplier' means a person who provides or intends to provide a FinTech Solution which does not require any authorisation whatsoever in terms of any financial services law currently in force in Malta.

'Malta Financial Services Authority Act', 'MFSa Act' or 'the Act'	means the Malta Financial Services Authority Act, Chapter 330 of the Laws of Malta.
'Malta Financial Services Authority', 'MFSa' or 'the Authority'	means the Malta Financial Services Authority, as established by the Malta Financial Services Authority Act.
'MFSa FinTech Regulatory Sandbox' or 'Sandbox'	means the regulatory environment, as established by virtue of this Rule, where FinTech operators may test their innovation for a specified period of time within the financial services sectors, under certain prescribed conditions.
'Participant Development Lead'	means the MFSa official assigned to an Applicant pursuant to RX-4.2.2.1 of this Rule.
'Proposal'	means a Solution proposed by an Applicant to the MFSa for testing within the Sandbox.
'Sandbox Applicant' or 'Applicant'	means a person submitting a Proposal to the Authority in terms of this Rule.
'Sandbox Participant' or 'Participant'	means a person participating within the testing phase of the Sandbox lifecycle.
'Selected Applicant'	means an Applicant that has been selected by the Authority to proceed to the application stage, as set out in Section 4 of Title 4 of this Rule.
'Testing Phase'	means the part of the Sandbox lifecycle comprising of the testing, evaluation and exit stages.

Title 2 Objectives

RX-2.1 With the aim of supporting sustainable financial innovation, ensuring regulatory certainty and promoting knowledge sharing, the objectives of the Sandbox are as follows:

- i. Innovation
The Sandbox will provide for a regulatory environment allowing technologically enabled financial innovation - new business models, applications, processes or products - to operate within the financial services market.
- ii. Sustainability
Through close dialogue, the MFSA will be monitoring Participants to observe whether their innovations truly offer value to the consumer and the wider financial services sector, whilst ensuring consumer/investor protection, market integrity and financial soundness.
- iii. Certainty
The Sandbox will enhance legal certainty within the financial services market as it provides both the Participants and the MFSA with the space to determine the appropriate requirements under the applicable regulatory frameworks.
- iv. Knowledge
Through collaboration with Participants, the Authority will have the opportunity to enhance its capacity in assessing the regulatory implications and gaps of such Solutions, and identify the appropriate response, as necessary.

Title 3 Scope and Applicability

RX-3.1 The Sandbox will be applicable to all FinTech Service Providers and FinTech Suppliers:

Provided that the Authority shall also consider other applicants, in terms of RX-4.4.1.5, within the framework of the Sandbox, which do not clearly fall within the scope of any financial services legislation currently in force in Malta.

RX-3.2 For participation in the Sandbox, the Sandbox Applicant shall first satisfy all the following Sandbox eligibility criteria in relation to the Solution. Accordingly, the Sandbox Applicant shall demonstrate, to the satisfaction of the Authority, that:

- i. Innovation
The Solution shall be (i) technology-enabled and (ii) innovative, resulting in new business models, applications, processes or products within the financial services sector;
- ii. Need
There exists a genuine need and objective for testing the Solution within a controlled environment in order to identify any inherent regulatory gaps, challenges and risks;
- iii. Benefit
The Solution shall offer identifiable direct or indirect benefit/s to consumers of financial services and the wider financial services sector; and
- iv. Readiness
The Solution is ready for testing within the Sandbox and that the Applicant shall have adequate resources to operate throughout the duration of the Sandbox.

RX-3.3 The MFSA may, at its discretion, also focus on sector-specific Solutions, including *inter alia* special purpose cohorts, after giving due notice to the public.

Title 4 Sandbox Lifecycle

Section 1 Structure

RX-4.1.1 The Sandbox shall be open to Sandbox Applicants on an ongoing basis. The Sandbox lifecycle will consist of six stages as presented in Figure 4.1, which shall be triggered upon the submission of a Proposal.

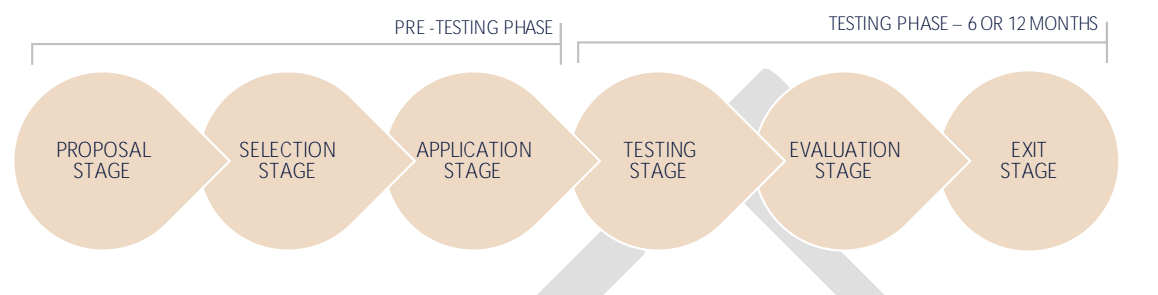


FIGURE 4.1: THE SANDBOX LIFECYCLE

RX-4.1.2 Further to the information and/or documentation required to be submitted to the Authority in terms of MFSA Rule X, the Authority may, at its discretion and at any stage, request any additional information and/or documentation as it may deem appropriate.

Section 2 Stage 1 - Proposal Stage

Sub-Section 1 Proposal Form

RX-4.2.1.1 The Applicant shall submit its Proposal to the Authority through the online proposal form [\[link\]](#), which will be considered by the Authority during Selection Stage, as set out in Section 3 of this Rule, in order to determine whether the Applicant falls within the scope of RX-3.1 and whether the Applicant and its Solution meet the requirements and eligibility criteria as set out in RX-3.2.

RX-4.2.1.2 Pursuant to RX-4.2.1.1, the Authority shall take into consideration the information submitted within the Proposal to the Authority, including *inter alia* a detailed description of the Solution as well as the testing objective/s and performance measure/s, together with any supporting documentation attached thereto.

RX-4.2.1.3 The Proposal shall be subject to a non-refundable administrative fee of EUR 500, which shall be due upon the submission of the Proposal to the Authority.

Provided that the submission of a Proposal shall only be considered by the Authority as complete, upon the verification that both: (i) the respective administrative fee; and (ii) the Proposal together with all the required supporting documentation have been submitted to the Authority.

RX-4.2.1.4 The Authority shall not initiate the review of submissions deemed incomplete by the Authority in terms of this Rule.

Sub-Section 2 Participant Development Lead

RX-4.2.2.1 Upon being in receipt of a complete Proposal submission, the Authority shall assign a Participant Development Lead to an Applicant, who shall act as a dedicated contact point between the Applicant and the MFSA and who shall provide the Applicant with the necessary regulatory guidance throughout its Sandbox lifecycle.

Sub-Section 3 Preliminary Meeting

RX-4.2.3.1 The Authority, upon receipt of the Proposal may, at its discretion, schedule a preliminary meeting with the Applicant.

Section 3 Stage 2 - Selection Stage

RX-4.3.1 Pursuant to RX-4.2.1.1, the Authority, shall determine during this stage whether the Applicant may proceed to the next stage and the Applicant shall be notified accordingly.

Section 4 Stage 3 - Application Stage

Sub-Section 1 Applications

RX-4.4.1.1 Further to RX-4.3.1, the Applicant will be informed by the MFSA on the appropriate authorisation process as set out in RX-4.4.1.3 to RX-4.4.1.5 of this Rule.

RX-4.4.1.2 The Applicant may proceed to the Testing Phase only upon satisfaction of the requirements as set out in Section 4.

RX-4.4.1.3 FinTech Service Providers

RX-4.4.1.3.1 Where the Selected Applicant is already licensed or otherwise authorised with the Authority under any financial services law currently in force in Malta and the Authority determines that the proposed Solution falls within the scope of the said licence or other authorisation, such Applicant shall be required to apply for a variation of its existing licence or other authorisation.

RX-4.4.1.3.2 Where the Applicant does not hold a licence or other authorisation under any financial services law currently in force in Malta and the Authority determines that the Applicant qualifies as a FinTech Service Provider, the Applicant shall be

required to seek authorisation under the applicable financial services legislation currently in force in Malta.

RX-4.4.1.4 FinTech Suppliers

RX-4.4.1.4.1 Where the Authority determines that the Applicant is a FinTech Supplier, and whereas no licence or other authorisation in terms of any financial services legislation currently in force in Malta shall be required, such Applicant shall satisfy the requirements set out in Section 4 in order to proceed to the Testing Phase.

RX-4.4.1.4.2 Notwithstanding RX-4.4.1.4.1, where, during the Sandbox lifecycle, the Authority determines that a FinTech Supplier is carrying out any activity requiring a licence or other authorisation under a financial services law currently in force in Malta, such person shall be required to seek a licence or other authorisation under the applicable law and shall immediately suspend such activity until the said authorisation has been obtained.

RX-4.4.1.5 Other Applicants

RX-4.4.1.5.1 Where the Authority determines that the Applicant's Proposal, notwithstanding the fact that it may appear that the activity may *prima facie* classify as a financial service, does not clearly fall within a specific financial services law currently in force in Malta, such Applicant shall satisfy the requirements set out in Section 4 in order to proceed to the Testing Phase.

RX-4.4.1.5.2 Notwithstanding RX-4.4.1.5.1, where, during the Sandbox lifecycle, the Authority determines that such a person is carrying out any activity requiring a licence or other authorisation under a financial services law currently in force in Malta, such person shall be required to seek a licence or other authorisation under the applicable law and shall immediately suspend such activity until the said authorisation has been obtained.

Sub-Section 2 Fitness and Properness Assessment

RX-4.4.2.1 Selected Applicants shall be required to be fit and proper on a continuous basis.

RX-4.4.2.2 Pursuant to RX-4.4.2.1, the Authority shall assess the fitness and properness of a Selected Applicant against the following four criteria:

- i. Competence;
- ii. Reputation;
- iii. Conflicts of Interest and Independence of Mind; and
- iv. Time Commitment.

RX-4.4.2.3 The fit and propriety requirement is an ongoing requirement. Accordingly, there may be instances which may lead to the reassessment of the Selected Applicant's suitability.

Sub-Section 3 Matters to be Mutually Agreed Upon

RX-4.4.3.1 The Selected Applicant shall submit to the Authority the following information:

- i. testing period, which shall be for a period of either six (6) or twelve (12) months, as the case may be;
- ii. testing objective/s and performance measure/s;
- iii. exit strategy as set out in Sub-section 5 of this Section; and
- iv. disclosures, including *inter alia* the regulatory status of the Applicant as well as the risks associated with its proposed Solution.

RX-4.4.3.2 The Authority's agreement to the matters specified in points (i) to (iv) under RX-4.4.3.1 shall be required in order for the Selected Applicant to proceed to the Testing Phase.

Sub-Section 4 Conditions

RX-4.4.4.1 Without prejudice to the Authority's powers under the applicable legislation, the Authority may, at its discretion, impose at Application Stage any condition/s it deems fit on the Applicant including limitation on the number and type of clients, product/services and imposition of compensation arrangements.

Sub-Section 5 Exit Strategy

RX-4.4.5.1 Pursuant to point (iii) of RX-4.4.3.1, the Exit Strategy shall cater for the following scenarios:

- i. Discontinuation
The Selected Applicant shall, to the satisfaction of the Authority, specify how it will exit the market in an orderly manner, by *inter alia* closing client accounts and/or transferring business to an alternative provider and subsequently surrendering or terminating any authorisation it may hold.
- ii. Continuation outside the Sandbox
The Selected Applicant shall, to the satisfaction of the Authority, specify how it will communicate with its clients that it has exited the Sandbox and is continuing its operations within the financial services sector, including any conditions that the Authority would have subjected it to.

Sub-Section 6 Fees

RX-4.4.6.1 An Applicant shall, upon submission of an application, pay to the MFSA the respective non-refundable fee as established in Table R4.1.

TABLE R4.1: APPLICATION FEES

Type of Applicant	Application Fee (EUR)
FinTech Service Providers	Applicable Fee as per Sector-specific Legislation
FinTech Suppliers	1,500
Other Applicants in terms of RX-4.4.1.5	2,500

Section 5 Stage 4 - Testing Stage

Sub-Section 1 Ongoing Obligations

RX-4.5.1.1 Upon successful completion of the Application Stage set out in Section 4, the Participant shall commence the Testing Phase without undue delay.

RX-4.5.1.2 If, for any reason, the Participant is not in a position to comply with RX-4.5.1.1, it shall notify the MFSA in writing setting out the reason/s for such a delay, together with an updated plan indicating the proposed date of commencement of the Testing Phase. On the basis of the information provided and the circumstances of the case, the MFSA may decide to terminate its Sandbox participation.

RX-4.5.1.3 The Participant shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. The Participant shall also supply the MFSA with such information as the MFSA may require.

RX-4.5.1.4 The Participant shall take reasonable steps to ensure continuity and regularity in the delivery of its Solution. To this end, the Participant shall employ appropriate and proportionate systems, resources and procedures to the Authority's satisfaction.

RX-4.5.1.5 The Participant shall maintain sufficient records to be able to demonstrate compliance with the requirements set out in this Rule or any applicable legislation, as well as any other conditions imposed by the Authority.

RX-4.5.1.6 The Participant shall at all times implement measures to protect the interest of clients and, where any detriment arises, to take such remedial measures as may be considered appropriate by the Authority.

Sub-section 2 Early termination

RX-4.5.2.1 In the event of early termination of the testing stage, by either the Participant or the MFSA, the Participant shall immediately proceed to the evaluation stage as set out in Section 6 of this Rule.

RX-4.5.2.2 Participants intending to terminate the testing stage should notify the MFSA of their intention to do so promptly and by not later than five working days after such decision was taken.

Upon receipt of the notification in terms of RX-4.5.2.2, the internal process for the early terminate of the testing stage shall commence. Where the MFSA decides to approve such decision, it will be communicated to the Participant.

Section 6 Stage 5 - Evaluation Stage

RX-4.6.1 During the Evaluation Stage, the Participant shall be required to draw up and submit to the Authority a report outlining the performance of its Solution on the basis of the testing objective/s and performance measure/s and either (i) its intended Exit Strategy, as agreed upon with the Authority during the Application Stage pursuant to RX-4.4.3.1, or (ii) a request to extend the duration of the Testing Phase for a period of either six (6) or twelve (12) months, as the case may be.

Provided that where the Authority grants an extension in terms of point (ii) above, the Participant shall commence once again the testing stage in terms of Section 5 of this Rule.

Notwithstanding point (ii) of RX-4.6.1, the Authority may also, at its own discretion, decide to extend the duration of the Testing Phase.

RX-4.6.2 The Authority shall take into consideration the report submitted in terms of RX-4.6.1, when evaluating the Participant's performance and in arriving at its decision to either (i) require the Participant to implement its Exit Strategy, as agreed upon with the Authority during the Application Stage pursuant to RX-4.4.3.1, or (ii) grant the extension to the Participant.

RX-4.6.3 The Authority shall communicate its decision pursuant to RX-4.6.2 to the Participant by means of a notification in writing.

Section 7 Stage 6 - Exit Stage

RX-4.7.1 Following notification of the decision in terms of RX-4.6.3, the Participant shall either (i) commence without undue delay its Exit Strategy, as agreed upon with the Authority during the Application Stage pursuant to RX-4.4.3.1, or (ii) continue its operations within the Sandbox, as the case may be.

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Title 5 Breaches and Administrative Penalties and other Regulatory Measures

Section 1 Breaches

RX-5.1.1 A breach of any requirement or obligation emanating from this Rule or from any other applicable law administered by the Authority, will trigger regulatory and/or enforcement action by the Authority.

In the exercise of its regulatory and/or enforcement powers and without prejudice to any other powers the Authority may have in terms of any applicable law, the Authority may at any stage also terminate participation of the Participant in the Sandbox.

Section 2 Administrative Penalties and other Regulatory Measures

RX-5.2.1 The Participant shall at all times observe the Rules which are applicable to it, as well as all the other relative requirements, duties and obligations which may emanate from the applicable law and regulations issued thereunder.

The powers of the Authority prescribed in this Rule shall be without prejudice to any other powers it may have in terms of any other applicable law. The MFSA has various regulatory and enforcement powers which may be used against any person falling within the scope of this Rule not complying with their regulatory duties and obligations. Such powers include the right to impose administrative penalties and to issue no action letters.