



RECENT MFSA INITIATIVES ON CORPORATE GOVERNANCE

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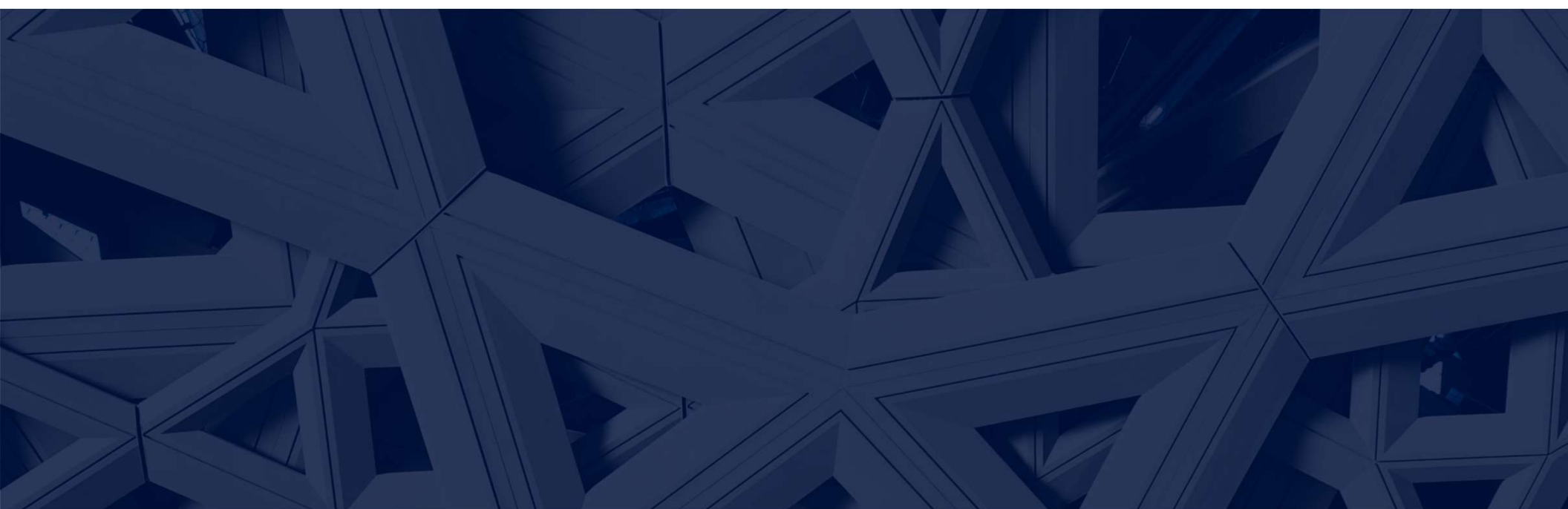
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Reviewing the Corporate Governance Framework – the rationale

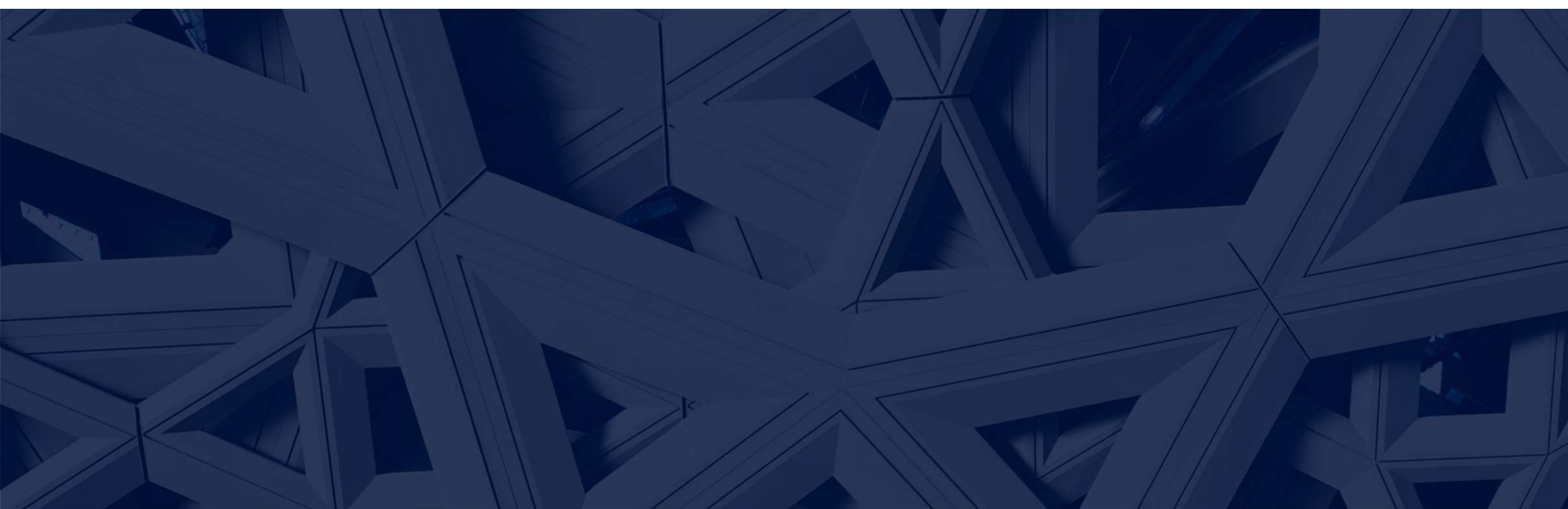


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Why review the Maltese Corporate Governance Framework?

- Corporate Governance and Culture is a **cross-sectoral strategic priority** of the MFSA.
- Corporate Governance is complementary **to investor protection, market integrity and financial soundness.**
- Supervisory experience has focused our attention on weaknesses in corporate governance systems and **the associated threats posed to the integrity of financial markets.**
- The Authority strongly believes that its initiatives will significantly **raise the bar** with respect to Corporate Governance, encouraging growth and modernisation and fostering a **more compliance-driven operating environment.**

Background to the Review



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Background to the review



The MFSA Strategic Plan 2019-2021

- to ensure that the highest standards of governance, risk management, culture and conduct are applied within the financial services sector.
- to strengthen governance culture and conduct within all sectors, including but not limited to financial services market
- to enhance awareness of best corporate governance practices.

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Background to the review

The Memorandum Of Understanding with the IOD

- In 2019, the MFSA signed a Memorandum of Understanding with the Institute of Directors, based in the UK and their local Chapter, the IoD Malta Branch.
- The main aim of the MoU was to collaborate with a view of **enhancing corporate governance standards** in Malta.

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Background to the review

The Maltese Corporate Governance framework

The main legislative source for Corporate Governance under Maltese Law is the Companies Act. The Companies Act is then complemented by three additional documents:

- The Corporate governance manual for **directors of investment companies and collective investment schemes**
- The Corporate governance guidelines for **public interest companies**
- The Code of principles of good corporate governance for **listed entities**

The Consultation Process



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The Consultation Process

- In line with its strategy of enhancing engagement with stakeholders, on the 5 February 2020, the MFSA launched a **Stakeholders Consultation**.
- The Authority proposed a principle-based Code, that would complement the existent national and European framework and should any conflict arise, **the existent legislation will take precedence**.
- The new Corporate Governance Code, which entities authorised by the MFSA and Malta-listed companies would have to **'apply and explain'** would then have been complemented by sectorial rules and guidance.

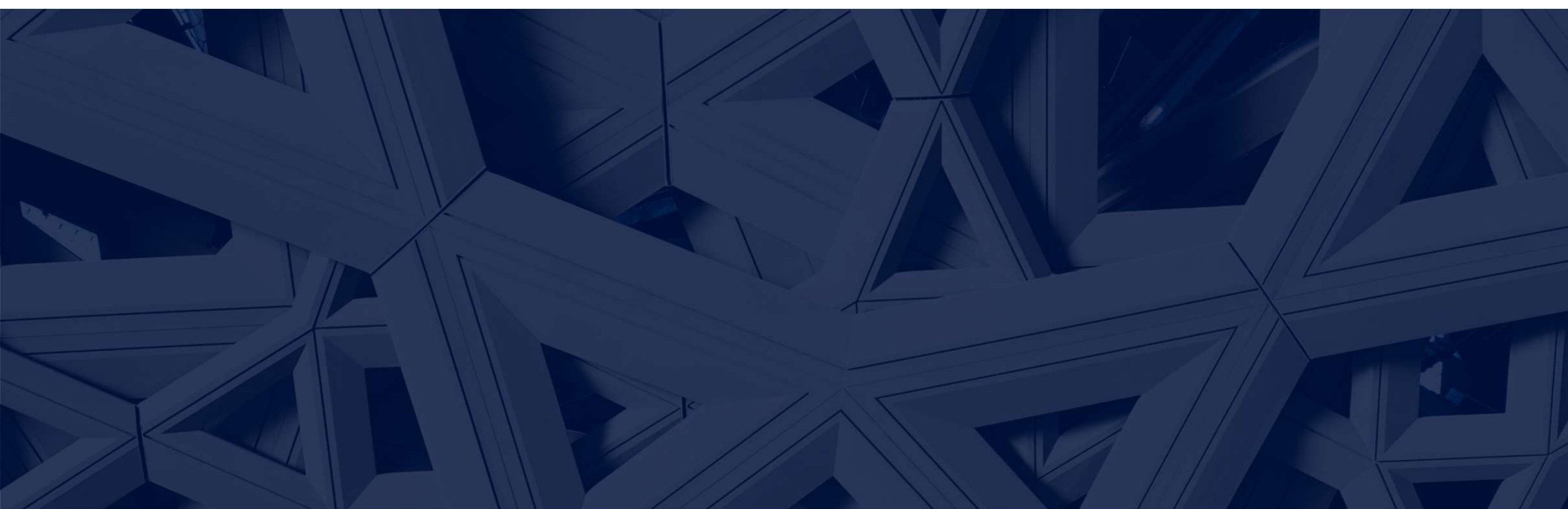
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The Consultation Process

Content of the Code

- ✓ Enhancing the effectiveness of the Board of Directors.
- ✓ The introduction of provisions to better engage with stakeholders, shareholders, institutional investors, and employees.
- ✓ Revisiting the responsibilities of the various Functionaries and Officials.
- ✓ A number of provisions on different aspects of Corporate Governance, including amongst others, Committees, Corporate Culture, Ethics Framework, AML and CFT, Risk Management, etc.

The Feedback Statement



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Feedback Received

- Feedback was received from a wide range of stakeholders.
- The overall initiative was positively received with a broad agreement amongst the respondents that there was a need to **raise the Corporate Governance standards** in Malta.
- Respondents were in agreement with the proposed hybrid approach, however concerns were raised in relation to the '**apply and explain**' application of the List of Principles.
- A number of respondents also recommended that **listed entities and regulated entities** should be kept separate and should not be governed by a single Code.

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Feedback Received

- Respondents emphasised the need for the MFSA to **avoid 'gold plating'** existing governance requirements already emanating from the various frameworks resulting in duplication of reporting for certain regulated entities.
- The vast majority of respondents noted that the code should be **proportional** and reflect the nature, size, complexity, operating environment and the risk posed to consumers and financial integrity of financial markets.
- The majority of respondents would welcome the opportunity for further discussion with the MFSA prior to the code being implemented.

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MFSA Position – Key Aspects

In determining the MFSA position, the following aspects have been considered

- ✓ The principles should aim to enhance the legal, institutional and regulatory framework for good governance in the Maltese Financial Services sector.
- ✓ The need to avoid duplicating existing governance requirements emanating from the various frameworks resulting in duplication of reporting for certain regulated entities.
- ✓ The need to keep Listed and Authorised Entities separate.
- ✓ The potential impact of having an 'apply and explain' Code applicable for all authorised entities, entailing adopting mandatory obligations to all entities, as well as related ongoing governance reporting obligation.

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MFSA Position – Key Aspects

Scope of the Code and Application

- ✓ A principle-based approach for the Corporate Governance Code will be adopted.
- ✓ Listed Entities are carved out of the scope of the framework.
- ✓ The Authority would retain the current Codes of Governance for Listed Entities and Prospects (which may be updated as needed by the MFSA).
- ✓ The framework will capture all Regulated Entities falling within the regulatory remit of the MFSA.

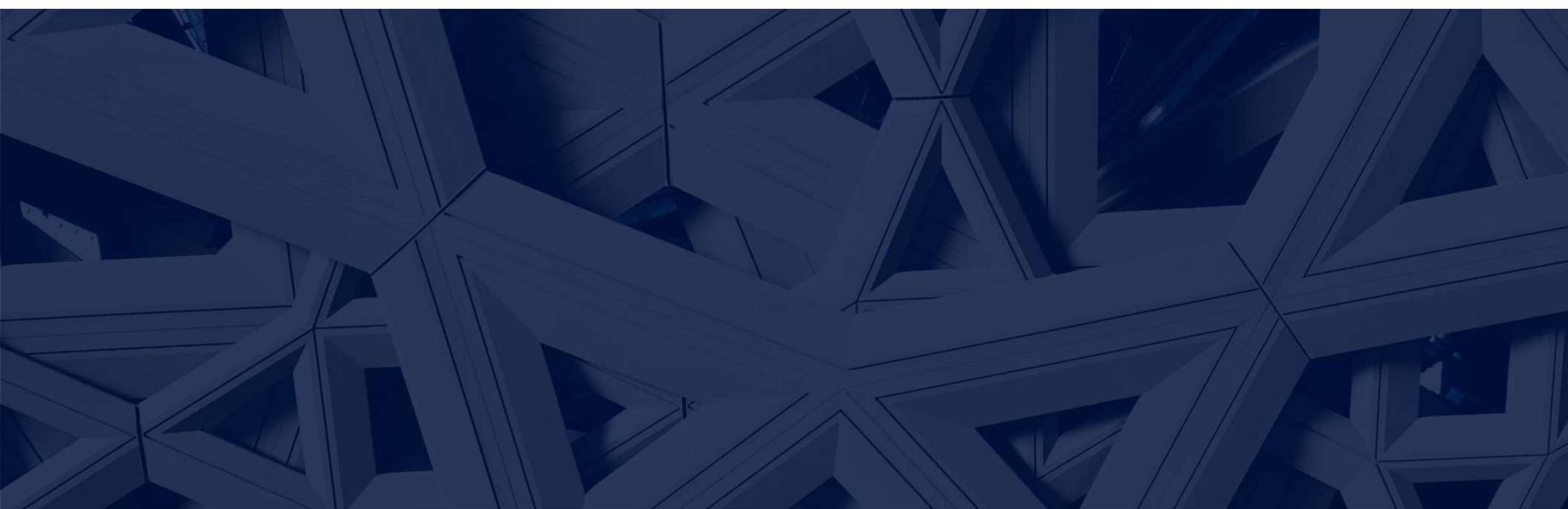
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MFSA Position – Key Aspects

Type of Code

- ✓ A hybrid approach which will consist of a combination of a principles-based approach, supported by a rules and guidance notes-based approach.
- ✓ The Code will not be issued as an MFSA Rule under the MFSA Act (as originally proposed during Consultation Period).
- ✓ The Code will be applicable on a best effort basis complemented by either binding Rules and/ or guidance notes (or sectoral specific Codes if deemed necessary) that would apply to different typesets.

The Corporate Governance Code



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Objectives of the Code

- ✓ Encourage **the adoption of best practices in Corporate Governance** for Malta's Financial Sector, reinforcing the public confidence in the Financial Services Sector.
- ✓ Reinforce governance structures, **improve relations and strengthen trust with stakeholders.**
- ✓ Assist the Board and the senior management in fulfilling their crucial duties and taking the best decision in the entity's interest and its stakeholders.

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Objectives of the Code *(...continued)*

- ✓ Ensure that Authorised Entities are managed and operated by effective Boards of Directors and that internal controls and procedures are adequate.
- ✓ Assist Authorised Entities in implementing enhanced governance standards to integrate sustainable, environmental and social elements in the entity's strategy to create long-term value for all stakeholders.

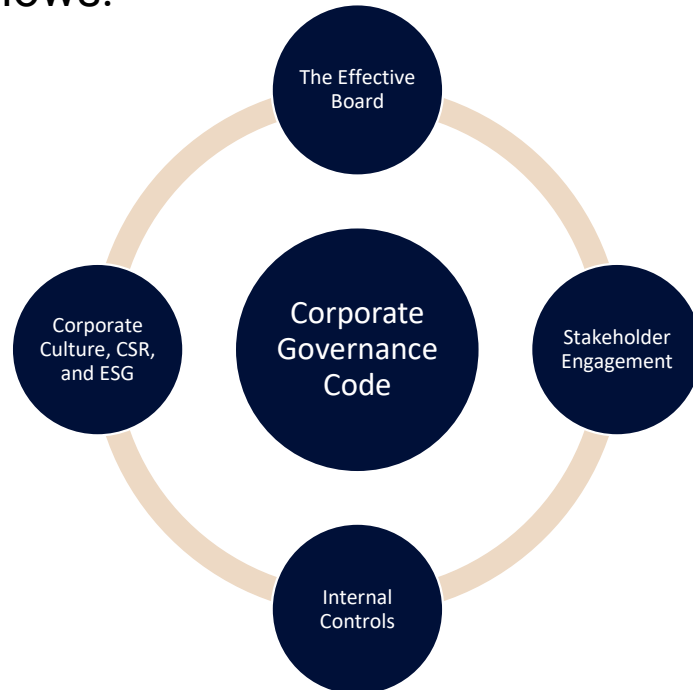
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Scope and Application

- ✓ The Code will apply to all persons authorised by the MFSA to provide Financial Services in or from within Malta.
- ✓ It will provide a set of principles, complemented by supporting provisions that are to be applied **on a best effort basis**.
- ✓ Given the wide range of Entities falling within its scope, the Code's application will be based on the **principle of proportionality**.
- ✓ The Principles will complement the existing regulatory framework, and should any conflict arise, the applicable laws, regulations or rules, the respective laws, regulations or rules are to prevail.

Principles of Good Corporate Governance

The principles of good corporate governance will be organised into four sections, as follows:



- 1) The Effective Board
- 2) Stakeholder Engagement
- 3) Internal Controls
- 4) Corporate Culture, CSR and ESG

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Corporate Governance Initiatives – the Way Forward

- 1) The Corporate Governance Code is currently being drafted by the MFSA.
- 2) Following internal approvals, the Code will be issued for public consultation.
- 3) The Consultation process will allow sufficient time for stakeholders to comment and give feedback on the draft Code.
- 4) Further initiatives, such as today's webinar, will be organised to further strengthen the MFSA's engagement with stakeholders.



Thank you

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