

# Settlement

Feedback Statement issued further to the Industry Responses to MFSA Consultation Document on the Proposed Settlement Procedure under the Malta Financial Services Authority Act

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## Introduction

On 21 February 2022, the Malta Financial Services Authority (MFSA or Authority) issued a Consultation Document on the Proposed Settlement Procedure under the Malta Financial Services Authority Act. The purpose of this Consultation Document was to highlight the changes proposed to be made to the Malta Financial Services Authority Act (MFSA Act) to include a specific provision empowering the MFSA to enter into settlement discussions and agreements.

Further to the said Consultation Document, the MFSA is hereby issuing a Feedback Statement on the main comments received. An outline of the main comments received and the MFSA's position in relation to them is provided below.

## Comments

In general, the responses received were all in favour of the MFSA having the legislative power to enter into settlement discussions and agreements, and the respondents are, overall, in favour of resolving investigations by means of a settlement agreement given that this will also benefit the investigated person.

In this respect, the main queries/comments received from the respondents are being reproduced and answered below:

### *1. Applicability of the proposed legislative provision on settlement*

The respondents sought clarity on the applicability of the legislative provision, that is, on whether the MFSA will have the power to enter into settlement agreements with both natural and legal persons. The MFSA would like to clarify that the text of the first paragraph of the legislative provision captures instances where the MFSA can enter into settlement agreements with legal persons who breached or are breaching any provision of the laws falling under the remit of the MFSA as well as with natural persons concerned in the ownership and/or management of a licence-holder who is participating or has participated in such a breach. Given that the MFSA is empowered to take enforcement action on both natural and legal persons, then it is also important for the MFSA to have the power to resolve investigations by means of settlement with both natural and legal persons. Finally, for the sake of clarity, the term 'person' as used in the proposed legislative provision refers to both natural and legal persons and this is in line with the definition of 'person' under Article 2 of the MFSA Act which refers to a "person" as including any entity corporate or unincorporated which may hold a licence or other authorisation issued by the Authority or which falls within the supervisory or regulatory authority of the Authority.

2. *The procedure to be followed by the MFSA in the case of breaches of settlement terms*

It is important to point out that, while hoping that this will only occur in remote cases, in instances where a settlement agreement has been signed but the investigated person does not adhere to the settlement terms, the MFSA will be empowered to take separate enforcement action in relation to the breach of the settlement term. Failure to comply with the settlement terms will be regarded as a breach of a provision of the law and hence remediation in those circumstances will not be applicable.

3. *The maximum penalty of €150,000 which the MFSA will be empowered to impose in the case of a breach of settlement terms.*

The respondents specifically queried the manner in which the MFSA will be calculating the penalty when there is a breach of a settlement term and the reasoning behind the establishment of this threshold. The MFSA would like to clarify that it will be calculating the penalty on a case-by-case basis, keeping in mind a number of factors such as proportionality. It is important to explain that a breach of the settlement terms will constitute a breach of the provision of the MFSA Act and hence the reason why the threshold of €150,000 was established. The breach of a settlement term is a totally different and separate breach from the original breach which led to the agreement. Moreover, the maximum penalty of €150,000 is being proposed for each failure committed and this is in line with Article 16(4) of the MFSA Act which caters for a maximum penalty of €150,000 for each infringement or failure to comply with any provision of the MFSA Act.

4. *The possibility to appeal a decision of the MFSA in relation to the breach of a settlement term.*

A separate investigation will need to be conducted in the case of a breach of settlement terms and hence this will entail the issuing of a decision by the MFSA. The provisions of the MFSA Act in relation to appeals will apply.

5. *Policies and Procedures – The respondents requested that any policies issued by the MFSA in respect of settlement be issued for consultation and that consultation with the industry in this respect remains ongoing.*

The MFSA would like to reiterate the fact that the principles proposed in the settlement policy have been issued for consultation. The MFSA will also publish the final Settlement Policy and any updates thereto. The MFSA has noted the feedback received in this respect and the interest of respondents in the Settlement Policy and hence will keep this in mind for future reference, should the need arise to amend the Settlement Policy.

## Way Forward

Following the analysis of the feedback received as detailed above, the Authority will go ahead with proposing the legislative provision for approval by Parliament with the intention to implement Parliament's decision within the next few months.

Moreover, the Authority is also working on a Feedback Statement in relation to the feedback received on the consultation process for the Settlement Policy itself. This will be published in the coming weeks on the MFSA website.

## Contacts

Any queries or requests for clarifications in respect of the above should be addressed by email on [enforcement@mfsa.mt](mailto:enforcement@mfsa.mt).