

Feedback Statement on the Corporate Governance Code

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Table of Abbreviations

AML	Anti-Money Laundering
CEO	Chief Executive Officer
CSP	Company Service Provider
CSR	Corporate Social Responsibility
EBA	European Banking Authority
ESG	Environmental, Social and Governance
ESMA	European Securities and Markets Authority
KPI	Key Performance Indicator
ICT	Information and Communications Technology
MFSA	Malta Financial Services Authority
MLRO	Money Laundering Reporting Officer
PMLFTR	SL 373.01 – the Prevention of Money Laundering and Funding of Terrorism Regulations
TCSPs	Trustees and Company Service Providers

1 Introduction

The Malta Financial Services Authority ('MFSA' or 'the Authority') has identified corporate governance as one of its key priorities –from both a strategic and supervisory perspective. Good corporate governance is an enabler for investor/consumer protection and also ensures the stability and integrity of the markets.

The Authority has identified corporate governance as a vital indicator of a compliance culture, and a driver for achieving regulatory outcomes, long term sustainable value for stakeholders and the appropriate management of risk. The MFSA is therefore committed to ensuring that Authorised Entities maintain good governance standards at the forefront of their respective agendas.

In 2020, the Authority published a [Consultation Document](#) entitled 'Stakeholder Consultation on Revisiting the Corporate Governance Framework for Entities Authorised by the MFSA and Listed Companies'. This proposed the implementation of a new Corporate Governance Code, seeking to raise the bar for corporate governance standards of entities falling under the Authority's remit. Feedback was received from a wide range of stakeholders, with most respondents welcoming the initiative and the proposal to issue a comprehensive, principles-based Corporate Governance Code. The importance of retaining sector-specific guidance and rules on corporate governance was also raised by respondents. The Authority's response and positions are highlighted in a [Feedback Statement](#).

In line with the positions set out in the Feedback Statement, the Authority prepared a [draft Corporate Governance Code](#) which, once in force, will be applicable to all persons authorised by the MFSA but not to Listed Entities falling within the scope of the MFSA Capital Market Rules, given that these already include specific governance provisions applicable to such entities. The draft Code was issued for [Public Consultation](#) on 22 February 2022. Through this consultation exercise, stakeholders were given a further opportunity to consider the Code's contents and provide views, comments and suggestions, prior to it coming into force.

This Feedback Statement highlights the key points of contributions received and sets out the MFSA's response and position thereto. The last section outlines the next steps that will be taken by the Authority pursuant to this project.

The contents of this document should be read in conjunction with: [i] the [Consultation Document of 22 February 2022](#); and [ii] [final Corporate Governance Code](#), which is today being published on the Authority's website and is also being attached as an annex to this Feedback Statement. In particular, when reading this Feedback Statement, one should also refer to the definitions provided in Section 3 of the Corporate Governance Code.

2 Feedback Statement

2.1 General

The MFSA would like to thank stakeholders for their valid and detailed responses. These were all noted and carefully considered when revisiting the draft Corporate Governance Code.

The MFSA's commitment to reinforce the Corporate Governance Framework for Authorised Entities through a 'principles-based' Corporate Governance Code was welcomed by all stakeholders participating in the consultation exercise. Respondents highlighted the Code's potential to strengthen governance and compliance standards amongst regulated bodies. They considered the draft Code to be an excellent guide covering a number of crucial components of effective corporate governance.

The majority of respondents also expressed their appreciation for being given another opportunity and a platform to express their views, complementing the input they had provided in the 2020 [Consultation](#). A number of positive views were also put forward regarding the extent to which stakeholders' views were onboarded when drafting the Code.

Although, as aforesaid, the Code was seen a positive initiative, respondents outlined specific adaptations and proposed various amendments that could enhance its overall effectiveness. These will be discussed in further detail hereunder.

2.2 Scope and High-Level Principles

The Authority proposed the introduction of a principles-based Corporate Governance Code applicable to all entities authorised by the MFSA (with some exclusions, as referred to in this document), while retaining the possibility of having sector-specific guidance notes and/or MFSA Rules supporting the Code.

Given the wide range of entities falling within its scope, the Code's application is based on the principle of proportionality. The Code will lay out core principles, complemented by supporting provisions, which Authorised Entities are expected to comply with on a 'best-effort basis'.

The Authority intends to establish the proposed Code to complement the existing national and European frameworks, and should any conflict arise between the applicable laws, regulations, rules or guidance notes issued by the Authority or European Supervisory Authorities, the provisions of such laws, regulations, rules or guidance notes shall prevail.

Feedback Received

The majority of respondents welcomed the principle-based approach adopted by the Authority. This was commended by stakeholders, as it was considered to provide an appropriate balance – the Code is comprehensive, yet it does not provide a rigid set of rules, giving entities flexibility in interpreting and achieving adherence to the principles. This notwithstanding, some comments were made regarding the need for the Authority to issue best practice guidance on how the principles may be applied.

Other stakeholders highlighted the diverse range of Authorised Entities falling within the scope of the Code, pointing out that this should be carefully considered by the Authority to secure the adherence to the principle-based Code.

Some respondents also highlighted that some principles appeared to be suitable for larger organisations having more complex operations, rather than more smaller entities. In this regard, it was emphasized that small and medium practitioners acting as CSPs, Trustees and Tied Insurance Intermediaries might encounter difficulties to implement the principles. The same respondents recommended that the Authority reconsiders the inclusion of these latter entities within the scope of the Code.

Similarly, a clarification was sought as to whether the Code will apply to Authorised Persons who are natural persons. A number of respondents suggested that the Authority ought to consider carving out Authorised persons who are natural persons from the Code's scope.

Respondents also extensively referred to the 'best effort basis' approach chosen and the pursuit of 'soft law'. Mixed opinions/views were provided in this respect.

Certain respondents also sought clarity on the level of adherence that Authorised Entities would be required to demonstrate, with some offering their perspectives on other possible ways forward. Some respondents pointed out that this approach may be interpreted as a 'voluntary' applicability and that this element of subjectivity could hinder the Code's effectiveness and its adoption by Authorised Entities. Respondents also advocated further clarity, particularly on how proportionality should be applied, to avoid conflicting interpretations.

Clarity was also sought in relation to the exclusion of Listed Entities falling within the scope of the MFSA Capital Market Rules from the Code's scope, particularly vis-à-vis the position on Listed Entities which are also Authorised by the MFSA.

MFSA Way Forward

The Authority welcomes the support received from stakeholders in relation to its proposal for a Corporate Governance Code composed of core principles, which seeks to ensure flexibility in

achieving adherence to the said principles and addresses the need for a reasonable balance between mandatory rules and self-regulation.

The Code should be regarded as a guide for good practice which entities falling within its scope, operating in the Financial Services Sector, should endeavour to implement. The Code's core principles set the tone, while the underlying supporting provisions seek to facilitate their application, by providing further guidance on how the principles should be applied in practice.

The Authority is of the view that stakeholders' concerns regarding the diverse range of Authorised Entities falling within the scope of the Code are addressed by virtue of the emphasis being made to the proportional application of the Code. This will ensure the necessary flexibility for entities to adapt their practices to the size, complexity and nature of risks they are exposed to.

The Authority acknowledges that the Code allows an element of subjectivity: entities will have to apply their own judgement as to how certain principles may be applied. In order for this not to impinge on the Code's effectiveness, the Authority is considering issuing additional practical guidance on how principles are to be applied. Going forward, the MFSA will further engage with market participants and stakeholder groups, through various initiatives, to ensure a good understanding of the Authority's expectations. Stakeholder groups are also encouraged to draw up best practice documents on how to adhere to the Code.

The Authority also appreciates that clarity on the scope of the Code is crucial. Amendments to the Code's preamble and section 1 on Scope and Application have been made, inter alia to provide clarity on whether the Code will apply to Authorised Entities which are also Listed Entities in terms of the Capital Markets Rules. It stresses that they shall not and that such entities will remain subject to existing requirements within Annex 5 of the Capital Markets Rules. Furthermore, a provision stating that the Code will not apply to Authorised persons who are natural persons has also been included within the Code.

Stakeholders' concerns on the application of the Code to TCSPs (which are not natural persons) will be tackled in the next section of this feedback statement, particularly the part relating to the definition of 'Financial Services'.

2.3 Definitions

Feedback Received

The majority of feedback received in this respect related to terms that in respondents' views merited further definition/attention.

Respondents questioned whether TCSP activity was encompassed by the definition of "Financial Services" and whether such entities would fall within the Code's scope.

Some respondents also pointed out that the definition of 'Person' appears to cover Authorised corporate and unincorporated Entities, and therefore, clarity was sought on whether Authorised Entities acting as sole practitioners are excluded from the application of the Code.

Respondents also provided feedback on the definitions of 'Management Body', 'Directors' and 'Ultimate Beneficial Owner'. Some suggested modifying the definition of 'Management Body', since it is used only in specific sectors of the Financial Services industry and may therefore be unclear to certain Authorised Entities. Other respondents questioned whether the Authority intends to incorporate the Board of Directors, CEO and Senior Management within this definition. It was also noted that the term 'Management Body' was only used once or twice, which made the term seem rather unnecessary.

Comments regarding the definition of 'Director' were aimed at linking the definition to that provided in the Companies Act. Moreover, feedback was also provided regarding possible modifications to other definitions, such as those of 'Executive Director' and 'Independent Director', mainly to enhance clarity in the Code.

With regards to the definition of 'Ultimate Beneficial Owner', multiple respondents suggested the alteration to 'Beneficial Owner', which was considered to provide better interpretation and consistency, in line with the definition of Beneficial Owner in the Prevention of Money Laundering and Funding of Terrorism Regulations ('PMLFTR').

MFSA Way Forward

The extensive and detailed feedback provided on this section has been duly noted and has been carefully considered.

Specifically, in relation to the definition of 'Financial Services', the Authority would like to draw respondents' attention to the definition provided under the MFSA Act, which also includes *"any other areas of activity or services as may be placed under the supervisory and regulatory competence of the Authority by the Minister or by any other law"*. Given that TCSPs fall within the supervisory and regulatory remit of the Authority, the Code will therefore apply to such entities.

The definitions of 'Person', 'Management Body' and 'Ultimate Beneficial Owner' have been amended. The definition of 'Person' has been linked to that found under the MFSA Act. That of 'Management Body' has been deleted. Following respondents' feedback, the definition of 'Ultimate Beneficial Owner' has been replaced with a definition for 'Beneficial Owner' and this is aligned to that within the PMLFTR.

In line with feedback received, the Authority has also amended the definition of 'Director', linking it to the one provided in the Companies Act.

The definition of 'Executive Director' is aligned with that provided within [the EBA/ESMA joint guidelines on the assessment of the suitability of members of the management body and key function holders](#). It is therefore the Authority's view that this should remain unchanged.

2.4 The Effective Board (Section 1)

2.4.1 The Role and Function of the Board

Feedback Received

The Authority has noted the extensive responses received in relation to the principles related to the role and function of the Board. The majority of the feedback for this section revolved around recommended clarifications in the wording that is utilised in the draft Code. It was suggested that more suitable wording would facilitate the execution of the Code's articles and the interaction between the Authority and the Authorised Entities.

Recommendations were also made to maximise the Code's consistency with the Companies Act.

Some respondents also endorsed the importance of including legal and regulatory compliance as a pillar of good corporate governance.

Respondents also pointed out that supporting provision 2.1.1.2.5, which states that the Board should establish and document its remit and power, may be seen as misleading given that it may give the impression that the Board sets out its remit, when the limits and powers of the Board are set out in the Companies Act as well as in the relative entity's instrument of incorporation.

Moreover, feedback was given regarding supporting provision 2.1.1.2.7, where respondents emphasized the importance of clarity on the role of the Board and the management. In their view, the Board should be responsible for approving and monitoring policies while management is accountable for setting procedures, without having the Board responsible for the latter.

MFSA Way Forward

In line with the feedback received, the Authority agrees that legal and regulatory compliance should be considered as a key pillar of corporate governance. Having effective corporate governance structures ensures compliance with regulatory requirements. To this effect, Core Principle 2.1.1.1.2 has been amended to include legal and regulatory compliance as a key pillar of corporate governance.

The Authority also made amendments supporting provisions 2.1.1.2.5 and 2.1.1.2.7 in order to enhance clarity.

Further to feedback received, a number of supporting provisions on the role and function of the Board were also enhanced.

2.4.2 Structure and Composition of the Board of Directors

Feedback Received

Some respondents noted that small and medium-size entities might find it challenging to adhere to the Code's recommended structure and composition of the Board. Therefore, suggested amendments were put forward.

It was also pointed out that it is the Board's responsibility to ensure that the company secretary has obtained the appropriate qualifications and experience, aligned with the respective nature of the Authorised Entity.

MFSA Way Forward

While the Authority acknowledges stakeholders' concerns that compliance with some of the provisions on the composition of the Board may prove burdensome for some small and medium-sized enterprises; it is reiterated that the new Corporate Governance Code embraces the principle of proportionality. The principle of proportionality shall also be central to its application. Sufficient clarity should be provided by supporting provision 2.1.2.2.2 (previously 2.1.2.2.5) which states that *"The exact composition and balance on the Board will depend on the circumstances and business of each enterprise. Entities should ensure a balance such that independence is ensured, and challenge is facilitated. Furthermore, there should not be undue reliance on particular individuals."* This should address the diversity in relation to the nature, size, complexity and business models of entities falling within the Code's scope.

Additionally, in relation to the suggestion regarding the company secretary, supporting provision 2.1.2.2.10 has been amended to clarify that the Board should be responsible for ensuring that the company secretary has the appropriate level of qualifications and experience in line with the nature and complexity of the Authorised Entity.

2.4.3 Appointment and Succession

Feedback Received

Respondents made suggestions regarding improvements vis-à-vis the clarity of the Code. In their view, the Authority should look further into the wording "They [Directors] should be appointed for an adequate period of time". Respondents highlighted that the term 'adequate' is open to interpretation and, to eliminate any subjectivity, this wording should not be used and be replaced with concrete figures.

MFSA Way Forward

The MFSA has considered the industry's feedback on Directors' tenure on boards. While the Authority agrees that reference to appointment for an adequate period of time should not be included in the Code, it is also of the view that the Code should not introduce prescriptive requirements, particularly when considering the different types of entities that fall within the Code's scope.

2.4.4 Chairperson of the Board and Chief Executive Officer:

Feedback Received

Feedback was received regarding the responsibilities of the Chairperson and CEO. Some respondents believe that certain responsibilities ought to be upheld by the Board of Directors rather than the Chairperson or the CEO (e.g. ensuring that Committees operate in an effective and efficient manner; assess the Board's individual and collective suitability assessments; establishing a succession plan for Senior Management).

With respect to individuals holding specific roles that may also be appointed as Chairperson, it was suggested that provision 2.1.4.2.4 should be amended to consider the instance of a senior managing official deemed to be the entity's beneficial owner.

MFSA Way Forward

The MFSA has considered the responses put forward on the provisions relating to the role of the Chairperson and CEO. In this respect, a number of supporting provisions, including 2.1.4.2.3 and 2.1.4.2.8, have been revisited to enhance clarity.

The Code, as amended, further emphasises the importance of the role of the Chairman to lead and guide the Board in efficiently carrying out its duties: the effective direction of the company must be considered a collective responsibility of the Board. Similarly, ensuring that Committees operate effectively and efficiently is also to be considered a responsibility of the Board. It is also being clarified that it is the Board that is responsible for establishing a succession plan for the Senior Management.

Additionally, specifically in relation to supporting provision 2.1.4.2.4, the Authority will consider Senior Managers who are the entity's Beneficial Owners as entitled to hold the role of Chairperson.

2.4.5 Remuneration

Feedback Received

Respondents offered limited feedback regarding this section.

MFSA Way Forward

In view of the limited feedback received, the Authority will not be carrying out any amendments to this section.

2.4.6 Evaluation of Board Performance

Feedback Received

Respondents flagged potential inconsistencies between provisions 2.1.6.1.1 and 2.1.6.2.4. While the former states that the Board's performance is ideally assessed independently, the latter recommends assigning it to a Committee run by a Non-Executive Director.

MFSA Way Forward

The Authority has revised supporting provision 2.1.6.2.4, further defining the role of the Board and the Nomination Committee (or an ad-hoc Committee chaired by a Non-Executive Director) in the evaluation process.

2.4.7 Board Meetings

Feedback Received

With respect to Board meetings, feedback revolved around the significance of reporting of Directors' attendance. The importance of entities including Directors' attendance in their financial statements, was stated by multiple respondents.

MFSA Way Forward

With regard to the reporting of attendance to Board and Committee meetings, the Authority agrees with respondents that the provision should clearly refer to Directors' attendance. Directors' attendance shall also be included in the entities' financial statements.

The provision, as amended, also sets out that it is the responsibility of the Chairperson to address any lack of attendance by Directors.

2.4.8 Conflicts of Interest and Confidentiality

Feedback Received

In relation to Directors dealing with a conflict of interest, respondents stated that the Code should provide more detailed and clear guidance to facilitate the elimination of such conflict. Moreover, it

was also suggested that a conflict of interest is best discussed by the Board of Directors, rather than solely the Chairperson.

Furthermore, it was highlighted that principle 2.1.8.2.1 on internal alert policies and procedures to report on conflicts of interests should explicitly consider instances that may be at high risk of conflicts of interests, such as the case of a MLRO or financial crime compliance managers that occupy the role of CEO, Beneficial Owner or managing partner.

MFSA Way Forward

Based on the feedback received, the Authority opted to amend a number of supporting provisions in this section of the Code.

Supporting provision 2.1.8.2.1 on internal alerts has been amended to draw entities' attention to the potential combination of roles, such as, for instance, the case of an MLRO occupying the role of a Beneficial Owner.

In relation to the clause related to the Register of Directors' interests, the MFSA considers the inclusion of the wording "The register should indicate the views taken by the Board regarding the conflict" to provide additional clarity on the Authority's expectations in this regard.

In order to avoid duplication, supporting provision 2.1.8.2.5 has been deleted, given that the matter in question was already included within the Code through supporting provision 2.1.1.2.10.

The Authority agrees that the meaning of 'beneficial' and 'non-beneficial' interests may be misleading in the context of Corporate Governance Code applicable to Authorised Entities, since this scenario typically applies to the case of Listed Entities. Reference to 'beneficial' and 'non-beneficial' interest has therefore been removed.

2.4.9 Ethics Framework

Feedback Received

Some respondents viewed the imposition of an ethics framework as too burdensome, given that some entities, such as Trustees, already abide by an existing Code of Conduct. Recommendations were therefore put forward for the Code to direct its focus on supervising the entity's Directors' observation of the sector-specific Code of Conduct.

MFSA Way Forward

The Authority reiterates that the Code's application will be based on the principle of proportionality. Some provisions included within the Code may overlap with the sectoral frameworks and therefore entities may already be satisfying such provisions.

With respect to respondents' feedback recommending that the provisions of this section should be aimed at ensuring Directors' compliance with the sector-specific Codes of Conduct already in place, the Authority reiterates that the Code is meant to complement existing frameworks. That being stated, supporting provision 2.1.9.2.3 has been amended to ensure that a code of conduct/ethics is embedded in entities' policies, procedures and mechanisms and adhered to by all Directors and staff.

2.5 Internal Controls (Section 2)

Feedback Received

Respondents' views on the section on 'internal controls' was generally positive. Nevertheless, several respondents suggested amendments to some principles and supporting provisions to enhance clarity and flexibility, and to highlight certain practices considered key for a robust and effective system of internal controls.

Some respondents pointed out that the Code should further stress the importance of implementing adequate internal control designs that increase the possibility of preventing and detecting financial crime risks. A respondent also suggested that the Corporate Governance Code should clearly state that the Board is to understand the risks emerging from the Business Risk Assessment , including financial crime compliance risks. The inclusion of a reference – addressed to the Board – about financial crime reports compiled by AML compliance managers and MLROs was also proposed – this would enable the Board to better assure the suitability of the entity's controls. Similarly, amendments were also recommended to supporting provision 2.2.1.2.2.1 on the role and responsibilities of the compliance function.

It was highlighted that the wording of core principle 2.2.1.1.3 might be misinterpreted, as it may imply that the supervision of an Entity's clean financial statements is the sole responsibility of Non-Executive Directors, when this is not the case. Amendments to this core principle were therefore recommended.

Respondents also expressed views on some of the provisions relating to the internal audit function. Stakeholders appear to embrace the approach that the applicability of such provisions is dependent on the respective entity's size, nature and complexity, and suggested that the same rationale is to be applied to the provisions on the Audit Committee. Some respondents suggested that the role of the Audit Committee in overseeing the financial reporting process and the relationship with the external and internal auditors, should be included in the Code.

In this respect, a respondent proposed the inclusion of the MLRO function, AML compliance manager, and financial crime compliance function in general as part of the Audit Committee's oversight responsibilities. A respondent also recommended specifying in supporting provision 2.2.1.2.3.1 that where the internal audit function is regulated by the sector-specific framework, it

should remain subject to such framework. Other respondents also suggested that it should be deemed crucial that the internal audit function operates objectively.

Other feedback related to the potential inclusion of industry-specific key functions within the Code, such as the actuarial function for insurance companies.

MFSA Position

The Authority has considered the responses put forward and has effected some amendments to this section.

As outlined in the [MFSA Supervisory Priorities for 2022](#), financial crime compliance is a key focus area for the Authority. Corporate governance and compliance culture complement each other and support the jurisdiction's objective to raise governance, anti-money laundering, and counter-terrorist financing standards.

In this light, various references to financial crime compliance risks and structures have been included within this section of the Code to enhance Authorised Entities' role as gatekeepers in the fight against financial crime. That being stated, reference to crime reports has not been included; however, supporting provision 2.2.1.2.1.4 has been amended to emphasize the importance of the Board being fully knowledgeable of the Entity's business risks, including financial crime risks.

With regard to principle 2.2.1.1.3, the Authority agrees with the respondents that Executive Directors are equally responsible for the matter and the principle has therefore been amended.

The MFSA has also taken note of the views related to the audit function and the Audit Committee and effected amendments in this respect.

With respect to feedback on the inclusion of industry-specific key functions, such as the actuarial function for insurance companies, the Authority believes that detail and granularity relating to particular sectors should not be included in the Code; however, these should be considered as part of the sector-specific initiatives which the Authority will be focusing on going forward.

2.6 Stakeholder Engagement (Section 3)

2.6.1 Engagement with Shareholders

Feedback Received

A number of respondents pointed out certain provisions which may potentially conflict with existing laws, regulations, rules and MFSA policies, particularly, the Shareholding Policy for Credit Institutions and Insurance Companies. For instance, while the Code states that 'shareholders as the owners of the entity should be able to influence corporate decision making', respondents highlighted that company law allocates such decisions to the Board of Directors, with the shareholders being granted specific powers. Certain respondents considered the Code to grant shareholders excessive power,

potentially overshadowing clauses in the Companies Act. Moreover, some of the Code's provisions were deemed to be a repetition of those in the Companies Act. In this respect it was recommended that there should be more focus on enhancing internal governance structures rather than reiterating what is already in the law.

MFSA Position

The Authority has duly considered the respondents' views on this section, specifically on the potential conflicts between some provisions in this section of the Code and local legislation. While amendments have been made to the Code to eliminate any potential conflict, the Authority reiterates that should any conflict arise between the applicable laws, regulations, rules or guidance notes issued by the Authority or European Supervisory Authorities, the provisions of such laws, regulations, rules or guidance notes shall prevail.

Core principle 2.3.1.1.3, regarding the decision-making authority attributed to shareholders, has been removed.

2.6.2 Engagement with Employees and other Stakeholders

Feedback Received

Respondents highlighted the lack of clarity of supporting provision 2.3.2.2.2. This provision states that: "The rights of stakeholders are to be respected and effective remedies for any violation of such rights should be in place." Some respondents recommended that this provision be deleted.

Respondents also put forward feedback on the appointment of senior managers and respective succession plans, with some expressing the view that the CEO has an important role in formulating and implementing such a plan.

MFSA Position

The Authority has effected minor amendments to the supporting provision 2.3.2.1.4 in order to highlight the importance of the CEO's involvement in appointing Senior Management and in establishing succession plans thereafter.

Supporting provision 2.3.2.2.2 has been removed.

2.6.3 Disclosures

Feedback Received

Most of the feedback received on disclosures focused on the Code's inability to provide alternatives when one of the Code's requirements is not applicable to all the Entities falling within the Code's

scope. Respondents requested further clarity on how they should proceed where a particular clause would be inapplicable.

MFSA Position

The Authority has taken note of the responses received in relation to this section. As afore-stated, going forward the MFSA will further engage with market participants and stakeholder groups, through various initiatives, to ensure a good understanding of the Authority's expectations. Moreover, the Code is also expected to be supplemented by additional sector specific policy work, which should provide further clarifications in this respect.

2.7 Corporate Culture, CSR and ESG (Section 4)

Feedback Received

Some respondents highlighted that certain aspects of this section could prove to be overly onerous for smaller entities, such as TCSPs. ESG reports, for example, were identified as being too burdensome – this could therefore result in inefficient use of resources. To this effect, respondents recommended the inclusion of wording such as *“where appropriate and proportionate”*, to avoid generalising.

Reference was also made to core principle 2.4.1.1.1 on corporate culture, suggesting the addition of wording highlighting the responsibility of the Board in cultivating a robust compliance culture.

Other respondents emphasised the possible links of ESG to the risk management framework, as well as the inclusion of KPIs to analyse short-term and long-term initiatives. Moreover, feedback was also received on the wording used for the ESG and ethics approaches. Respondents proposed that the Code should adopt a clearer way of articulating what it expects from respective entities in terms of ESG strategy and other related ethics issues.

MFSA Position

While noting the responses received, the Authority believes it is crucial to reiterate that the proportional application of the Code will ensure the necessary flexibility for small entities in determining the extent of the Code application.

Further to the feedback received, core principle 2.4.1.1.1 on corporate culture has been amended to emphasise the Board's role in ensuring a strong compliance culture.

Specifically on the feedback related to the potential correlations with the risk management framework and the introduction of KPIs, the Authority reiterates its commitment to issue further sector-specific guidance and/or more granular Rules, in response to specific industry sector needs.

3 Conclusion

The final Corporate Governance Code is today being [published](#) on the Authority's website. For ease of reference, it is also being attached as an annex to this Feedback Statement.

The publication of the Corporate Governance Code should be considered as the first in a series of corporate governance initiatives that the Authority is undertaking. Going forward, it is expected that the Code is supplemented by additional sector specific policy work, to enhance governance arrangements and related regulatory requirements for each sector. This may include updating Rulebooks, issuing Sectoral Codes, issuing Guidance Notes, etc., as may be necessary.

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