

# Settlement Policy

A5

8 November 2022

# CONTENTS

---

- 1. Introduction ..... 5
- 2. Purpose and Applicability ..... 5
- 3. Policy Statement..... 6
- 4. References ..... 10

# REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	8 November 2022	Settlement Policy Issued
2.00	31 January 2025	Amended Settlement Policy

# DEFINITIONS

---

TERM	DEFINITION
Authority or MFSA	The Malta Financial Services Authority as established by Chapter 330 of the Laws of Malta, the Malta Financial Services Authority Act.
Person(s)	All natural or legal persons authorised by the MFSA to provide financial services or otherwise falling under the regulatory and supervisory function of the MFSA.
Investigation	An investigation being carried out by the Enforcement Function in relation to alleged breaches of financial services laws and regulations.
Investigated Person	A natural or legal person who is under an investigation by the MFSA.
MFSA Act	Chapter 330 of the Laws of Malta. The Malta Financial Services Authority Act.

# **1. Introduction**

The Malta Financial Services Authority ('MFSA' or 'Authority'), primarily through its Enforcement Function, carries out investigations of alleged breaches of financial services laws and regulations on licence holders, or persons authorised by it or falling under its regulatory or supervisory function. The Authority aims at resolving investigations in the shortest time possible to ensure efficiency and productivity. In order to achieve this aim, the MFSA has sought to strengthen its powers through the implementation of this policy document on settlement, as a means of resolving investigations (the 'Settlement Policy').

The Settlement Policy sets out a regime to be adopted by the MFSA in relation to settlement agreements, which regime will be further detailed in a separate internal procedure setting out a step-by-step process to be followed when entering into settlement discussions which may result in specific agreed terms of settlement.

## **2. Purpose and Applicability**

The Settlement Policy is being issued to set out the MFSA's policy in relation to the settlement process to be adopted by the MFSA when entering into settlement discussions with persons under investigation.

The Settlement Policy shall apply to settlement discussions entered into up to the moment when the MFSA issues its final decision. This Settlement Policy will not apply to agreements entered into after the MFSA issues its final decision. The Authority may consider entering into settlement agreements after it issues its final decision, on a case-by-case basis, only if the terms of settlement do not trigger a change in the Authority's final decision.

Except for the specific cases in which the MFSA will not entertain a request for settlement (as further specified below), the MFSA is empowered to enter into settlement agreements in relation to any enforcement action which it is minded imposing as per the powers conferred to it by the MFSA Act and any other applicable law. This means that the power of the MFSA to enter into settlement agreements is not being contemplated solely for those cases where the MFSA is minded imposing an administrative financial penalty. Moreover, where the MFSA is minded imposing any other regulatory action, not being an administrative financial penalty, the MFSA has the power, during settlement discussions, to agree imposing a different regulatory action than that contemplated in the minded letter.

### 3. Policy Statement

The Settlement Policy establishes the following principles:

1. *Proactive Approach* - Unless the MFSA receives a proposal for settlement from an Investigated Person, the Authority may propose the initiation of settlement discussions itself by sending out, to the person being investigated, a settlement proposal letter together with the minded position following an investigation carried out by the Enforcement Function. The settlement proposal letter offers to the person under investigation the possibility to enter into settlement discussions. The settlement proposal letter shall include details as to the process to be followed if the person under investigation wishes to accept the proposal of the Authority to enter settlement discussions. In the interest of time, the settlement proposal letter shall be sent to the Investigated Person together with the minded position and the Investigated Person will have the possibility to reply to both letters accordingly.

Nonetheless, the possibility to enter into settlement discussions can also be availed of from the moment that the Investigated Person becomes aware that the MFSA has commenced an investigation. In this case, the Investigated Person may approach the MFSA and request such discussions, as long as the potential breaches do not fall under one of the exceptions set out in this Settlement Policy.

2. *Exceptions* - The MFSA will not enter into settlement discussions in the following cases:
  - a) in cases where the alleged breaches relate to possible unauthorised activity, possible criminal offences and/or possible serious, repeated and systematic breaches of the anti-money laundering and funding of terrorism laws and regulations;
  - b) in cases where, following an assessment carried out by the Authority, an individual is potentially deemed to no longer satisfy the criteria to be regarded fit and proper to carry out a senior position within a licenced entity, specifically the criteria in relation to reputation, including integrity which is part of the assessment carried out on the reputation of such individual;
  - c) in cases where settlement discussions already started however, they were stalled and hence investigation continued. In such cases the Authority will not be in a position to entertain a further request for settlement as the settlement discussion needs to be taken seriously and considered as a one-time opportunity provided by the Authority to the Investigated Person to resolve the matter amicably;

- d) in cases where the breaches identified are such that the case could have an adverse impact on the financial sector or on the reputation of Malta or are otherwise of such a nature that it would not be in the public interest to enter into a settlement with the Investigated Person;
- e) in cases where at least two years have not yet elapsed from the execution of a settlement agreement with the same Investigated Person. This exception shall not apply to instances, where a settlement agreement in respect of a non-material breach has been entered into. Hence, this means that when an Investigated Person has already settled with the MFSA and wishes to enter into another settlement agreement in the timeframe of two years, this will only be possible when:
- A settlement agreement has been entered into in respect of a non-material breach and the Investigated Person wishes to enter into another settlement in respect of a non-material breach;
  - A settlement agreement has been entered into in respect of a non-material breach and the Investigated Person wishes to enter into another settlement in respect of a material breach; and
  - A settlement agreement has been entered into in respect of a material breach and the Investigated Person wishes to enter into another settlement in respect of a non-material breach.

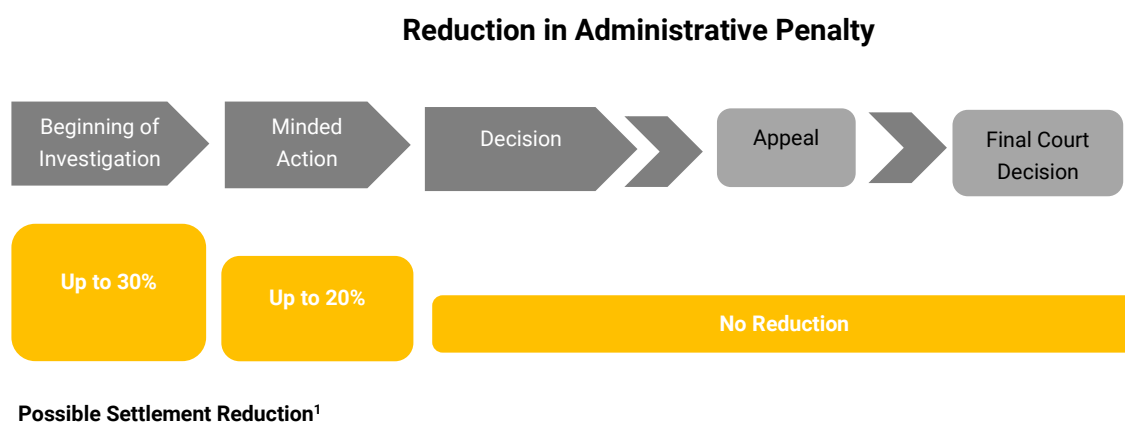
Nevertheless, the total number of settlement agreements which the MFSA may enter into in the time period of two years with the same Investigated Person cannot exceed two settlement agreements.

- f) in cases where the MFSA finds that the Investigated Person was found to have again breached the same obligation, which was already subject to a settlement agreement, in a serious, repeated and systematic manner.
3. *Capping* - Apart from the above-mentioned instances where the MFSA will not enter into settlement discussions, the MFSA will not be proposing itself to initiate settlement discussions in cases where the minded action of the MFSA is in relation to an aggregate administrative financial penalty of up to EUR 5000. However, in such instances there is nothing precluding the MFSA from still entering into settlement discussions if the request for settlement is proposed by the person under investigation.
4. *Time Limit* - Settlement discussions need to be taken seriously by the person under investigation with the aim of resolving the investigation in the shortest time possible.

To this effect, agreement to the proposed settlement terms need to be achieved within a time limit of two months from when the person under investigation and the MFSA initiate settlement discussions. If agreement is not reached within this time period, it will be deemed as if settlement discussions are not successful and hence the Authority will be empowered to continue with the investigation and issue its final enforcement action accordingly. The MFSA, in its sole discretion, may decide to extend this time limit of two months within which agreement to settlement terms need to be achieved, when progress in the settlement discussions is being made and there is goodwill on the part of the Investigated Person to conclude investigations by means of a settlement agreement. To ensure that the time limit of two months is adhered to, it is imperative that the Investigated Person replies to the MFSA's counter proposal at the earliest opportunity and not later than two weeks from the receipt of the MFSA's counterproposal, especially for cases of non-material breaches. This will ensure the timely conclusion of the investigation being done by the MFSA.

5. *Indicative Reduction in Administrative Penalty* - To encourage early settlement, in the case where the MFSA is minded imposing an administrative financial penalty for alleged breaches committed, an indicative system of reduced financial penalties shall be applied (see diagram below). The diagram below reflects how early in the decision-making process the settlement agreement is signed. Such reductions will be applied against the amount of administrative financial penalty which the Authority would otherwise have expected to impose on the person under investigation had the decision-making process been taken through to its conclusion.

The below diagram is indicative of the reductions to be applied given that the Authority might, during settlement discussions, consider affording a different reduction depending on the circumstances of the case, such as the quantum of the original proposed penalty and the level of co-operation and goodwill shown by the Investigated Person.



<sup>1</sup> A reduction of up to 30 % will be applied if settlement is reached during investigation up to the issuing of the minded letter. If settlement is reached after the issuing of the minded letter but before the issuing of the MFSA's final decision, a reduction up to 20% will be applied. No reduction will be granted if settlement is reached after the MFSA issues its final decision.



In order for the MFSA to assess the reduction to be afforded, reference is to be made to the below parameters on the applicable percentages:

- The maximum of **30%** ('Beginning of Investigation' stage) and **20%** ('Minded Action' stage) is to be afforded immediately as a sign of goodwill to enter into a settlement agreement;
- An additional **10%** reduction (as a maximum) is to be afforded when the Investigated Person would have taken all reasonable measures to remediate the breaches and to avoid its repetition;
- An additional **5%** reduction is to be afforded when the Investigated Person proves that, either if there were losses known to the Authority, incurred by third parties caused by the potential breach, these were duly compensated or that there were no losses made ; and
- An additional **5 %** reduction is to be afforded when the Investigated Person is deemed to have cooperated with the MFSA during investigation.

This means that at the stage of '*Beginning of Investigation*' one can avail himself of a reduction ranging from 30% to 50%. On the other hand, at the stage of '*Minded Action*' one can avail himself of a reduction ranging from 20% to 40%.

For the sake of clarity, in the case of non-material breaches, the MFSA does not issue an Investigation Letter at the '*Beginning of Investigation*' stage.

6. *Termination* - The MFSA is empowered to end any settlement discussions already started if it is evident that the Investigated Person does not have the willingness to conclude the matter amicably and is indeed wasting time and resources instead of embarking into proper discussions. Moreover, before terminating any settlement discussions because of lack of willingness to conclude the matter or because the time limit of two months is elapsing, the MFSA will be issuing a 7-day notice letter to the Investigated Person as a final notice/warning. Hence, the Investigated Person would be advised that settlement discussions will be considered as terminated within seven days from the date of the letter if no final response on settlement is received.
7. *Publication* - Following the execution of a settlement agreement, a public statement or notice shall be published on the MFSA website detailing, amongst others, the fact that a settlement agreement has been reached together with details of the findings of the Authority and the relevant legislative provisions breached. Moreover, the public statement/notice to be issued following the execution of a settlement agreement will also include the identity of the Investigated Person with whom a settlement agreement

has been reached. However, the MFSA will retain discretion not to publish the identity of the Investigated Person where, following a case-by-case assessment, the MFSA believes that publication would jeopardise the stability of financial market or an ongoing investigation or where publication would cause, insofar as it can be determined, disproportionate damage to the person involved.

## **4. References**

Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta)  
<https://legislation.mt/eli/cap/330/eng>