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Guidance Note on the Methodology to Set
Administrative Penalties relating to
Non-Material Breaches

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Section 1 Introduction

The Malta Financial Services Authority (hereafter referred to as 'MFSA' or 'the Authority') is publishing a Guidance Note that outlines the principles and criteria which serve as a basis for the Authority to ensure that administrative penalties are effective, proportionate and dissuasive. The publication of this Guidance Note is another step in the MFSA's drive to increase the level of transparency of its policies and practices to entities and individuals. (hereunder referred to as 'Person/s'¹). Moreover, this Guidance Note should serve as a means for the Authority to ensure that appropriate action is taken against Persons following non-material breaches relating to submissions of regulatory reporting to the MFSA, and any other breaches deemed to be non-material in nature which emanate from the respective laws, regulations and rulebooks, as may be amended from time-to-time.

Persons authorised and supervised by the MFSA should comply with all the relevant regulatory requirements and standards. To foster such compliance, the Authority has a range of enforcement powers emanating from the MFSA Act (Cap. 330 of the Laws of Malta), as well as various other sectorial financial services legislation. In terms of Article 16A of the MFSA Act, as well as provisions within various other sectorial financial services legislation, as the competent authority, the MFSA may impose an administrative penalty on any licence-holder should the Person's actions would result in a breach of the respective legislation or regulations from which the requirement emanates. While the MFSA is conferred a degree of discretion through the relevant laws in determining the amount of the administrative penalty appropriate in each case, the penalties must be effective, proportionate and dissuasive and must not exceed the limits specified in the respective legislation.

The MFSA has identified a number of regulatory and/or legislative requirements relating to the submission of regulatory reporting to the MFSA, which if not adhered to, would unequivocally result in a breach of the respective legislation or regulations from which the requirement emanates. A non-exhaustive list of regulatory reporting requirements by Persons authorised and supervised by the MFSA is provided in Section 3.3 of this Guidance Note.

This Guidance Note also provides information on the process followed by the MFSA when setting the appropriate level of an administrative penalty to be imposed on Persons following non-material breaches relating to submissions of regulatory reporting to the MFSA, which emanate from the respective laws, regulations and rulebooks, as may be amended from time to time.

With the aim of ensuring that the amount of an administrative penalty is fair and proportionate, the methodology applied by the MFSA (in determining the amount of an administrative penalty) considers the duration of the potential breach², as well as the repeated breach of the same

¹ 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.

² The term 'potential breach' is used when the Authority's decision is still at minded stage and is so used because the Person, at this point, is given an opportunity to send representations with reasons why the proposed regulatory action should not be taken by the MFSA. Thus, an identified breach is considered to be a 'potential breach' unless otherwise demonstrated by the Person and until the Authority reaches a final decision on the breach it identified.

regulatory provision/s in respect of which the MFSA would have already imposed an administrative penalty on the Person during the previous three (3) financial years.

This Guidance Note shall be read in conjunction with the [Policy Document on Non-Material Enforcement Action](#) which sets out a regime for enforcement action taken by the MFSA following non-material breaches of European or local legislation and regulations, and/or rules, relating to submissions of regulatory reporting to the Authority.

Section 2 Purpose

The purpose of this Guidance Note is to provide information to Persons authorised and supervised by the MFSA on the process that is followed by the Authority when calculating an administrative penalty to be imposed on a Person that has failed to adhere to regulatory and/or legislative requirements (as may be amended from time to time) which breaches are considered to be non-material in nature relating to submissions of regulatory reporting to the MFSA.

The process that is followed by the Authority when identifying non-material breaches committed by Persons authorised and supervised by the MFSA is based on the principles of proportionality, discipline and deterrence. Moreover, the Authority's decisions on the imposition of appropriate administrative penalties must deter a Person that has committed a breach from committing further breaches. Such decision should also act as a sufficient deterrent for other Persons from committing similar breaches, as well as to enable the MFSA to continue to meet its long-term operational objectives, that is, to safeguard the integrity and stability of the financial market and protect consumer interests.

Essentially, this process should not be regarded as exhaustive as it serves as a guiding principle for the Authority to ensure that the administrative penalty is effective, proportionate and dissuasive. In the event that the Authority considers that the administrative penalty is not dissuasive enough, the Authority may – at its discretion – increase the quantum of the said administrative penalty.

Section 3 Submissions of Regulatory Reporting to the MFSA

When a Person is required to make a submission to the MFSA in line with any requirement set out in any law, regulation or rulebook which falls within the MFSA's regulatory and supervisory remit, such submission should be made in accordance with applicable legislation or in the manner which the MFSA may specify from time to time.

3.1 Timely and Complete Submissions

All submissions made to the MFSA must be made in a timely manner and shall adhere to the timeframes and deadlines which are from time to time stipulated by the MFSA, or expressly

set out in European regulations, local legislation, regulations, rulebooks and any other documents which may be issued by the MFSA.

In this respect, the MFSA is under no obligation to issue reminders before or after the expiration of any deadlines relating to regulatory submissions.

Where a Person is uncertain as to how and to whom submissions are to be made, or has queries in relation to the submission, such Person should seek guidance from the MFSA in a timely manner. This should be done before the expiration of the submission deadline in order to give time to the MFSA to provide the necessary guidance.

The MFSA requires all submissions made to include all the requested or relevant information in a comprehensive and complete manner. Furthermore, the information provided should be of a good quality and it should be to the satisfaction of the MFSA. Where the MFSA deems a submission to be incomplete or of poor quality, it shall reserve the discretion to take regulatory action in terms of the applicable laws, rules and regulations.

3.2 Failure to Submit Regulatory Reporting to the MFSA in a Timely Manner

Where a Person is under an obligation to make submissions of regulatory reporting, and if the MFSA is of the view that such Person has failed to make the necessary submissions within the time stipulated by the MFSA or the time expressly set out in the European regulations, local legislation, regulations, rulebooks and/or any other documents issued by the MFSA, the MFSA will proceed with taking enforcement action.

Moreover, unless specifically required by European legislation, as a general rule, the MFSA will not be granting case-by-case extensions relating to filing deadlines which are explicitly stipulated by law, rules or regulations. The MFSA may however, on a discretionary basis, grant extensions to filing deadlines in very exceptional cases which affect a particular sector or the financial services industry in general.

3.3 Regulatory Reporting Requirements

The overall objective of this Guidance Note is to set out the process to be followed by the MFSA when calculating an administrative penalty to be imposed on a Person that has failed to adhere to regulatory and/or legislative requirements which are considered to be non-material in nature, the latter relating to submissions of regulatory reporting to the Authority. For ease of reference, below is a non-exhaustive list of regulatory reporting requirements grouped by Financial Services Sector:

Financial Services Sector	Regulatory Reporting Requirements
Investment Services Firms / Collective Investment Schemes	Submission of annual report
	Submission of audited financial statements
	Submission of auditor's management letter
	Submission of custodian's report

	Submission of auditor's report
	Submission of director's confirmation
	Submission of letter from the board of directors
	Submission of auditor's confirmation
	Submission of audited annual/interim financial return
	Submission of quarterly reporting related to conduct
Listed Entities	Submission of PDMR notifications (also applicable to PDMRs & PCAs)
	Publication of half-yearly / annual financial reports
Company Services Providers	Submission of annual compliance return
	Submission of certificate of compliance
	Submission of audited financial statements
	Submission of auditor's management letter
	Submission of statement of solvency for individual CSPs
Trustees	Submission of annual compliance return
	Submission of audited financial statements
	Submission of auditor's management letter
	Submission of certificate of compliance
	Submission of a declaration of beneficial ownership
	Submission of changes to reported beneficial ownership information of trusts
	Submission of annual declaration of no changes to beneficial ownership information of reported trusts
Credit / Financial Institutions	Submission of the audited financial statements
	Submission of the auditor's management letter
Insurance Principals	Submission of audited financial statements
	Solvency and financial condition report, accompanied by an auditor's report
	Submission of annual and quarterly quantitative templates
	Submission of narrative reports (SFCR, RSR, ORSA)
	Submission of the national specific templates
	Submission of auditor's management letter
	Submission of actuary's report
	Submission of quarterly management accounts
	Submission of audited financial statements (for holding companies part of the same group)
	Conduct related data
Insurance Intermediaries	Submission of statements in respect of insurance distribution activities or reinsurance distribution activities
	Submission of audited financial statements
	Submission of auditor's management letter
	Submission of management accounts
	Submission of business of insurance intermediary statements
Pension Schemes / Retirement Scheme Administrators	Submission of annual reports together with a copy of the auditor's management letter and the auditor's report

	Submission of unaudited Interim/annual financial return
	Submission of audited financial statements
	Submission of the annual audited return & VFASP respective representations sheet
VFA Service Providers	Submission of the audited financial statements
	Submission of the auditor's report & opinion
	Submission of the auditor's management letter
	Submission of an IT audit report / systems audit report
	Submission of a compliance certificate
	Submission of the soft copy of the automated annual VFASP Return
	Submission of the original representations sheet of the annual VFASP return
	Submission of the soft copy of the automated interim VFASP return
	Submission of the original representations sheet of the interim financial return
	Submission of the RMICAAP
	Submission of audited financial statements
VFA Agents	Submission of auditor's management letter
	Submission of auditor's report
	Submission of annual return
	Submission of compliance certificate
VFA Issuers	Submission of AML/CFT Report
	Submission of systems audit report

Section 4 Determining the Appropriate Level of Administrative Penalty

As explained in Section 1 of the Guidance Note, in order to ensure proportionality when computing the quantum of an administrative penalty with respect to failures related to submissions of regulatory reporting, the Authority considers the duration of the potential breach, as well as the repeated breach of the same regulatory provision/s in respect of which the MFSA would have already imposed an administrative penalty on the Person during the previous three (3) financial years. In practice, when computing the quantum of an administrative penalty the Authority follows a three-level process, as explained below:

Level 1 – Setting the Base Amount of Proposed Administrative Penalty

In determining the quantum of a proposed administrative penalty, the MFSA begins by setting the base amount which is fixed as established by the Authority from time-to-time (also considering any minimum penalty amounts as established by Law) with respect to each regulatory submission. In order to ensure proportionality when computing the amount of the administrative penalty, the Authority considers the level of importance of the respective regulatory submission, as well as the criticality of the respective sector in providing stability to financial markets and the overall economy.

Level 2 – Initial Proposed Administrative Penalty by Considering the Duration of the Potential Breach

When a Person is found to have potentially committed a breach of the regulatory requirements, weighting will be given to the duration of the potential breach by the respective Person to ensure that the penalty is effective, proportionate and dissuasive. The first aggravating factor that is considered by the MFSA when calculating the proposed administrative penalty is in relation to the number of days delayed in the submission of regulatory reporting to the Authority.

By way of explanation, in scenarios where the MFSA receives the regulatory submissions late by a number of days from the regulatory deadline, no administrative penalty is imposed on such Person, but a strongly worded letter is issued by the Authority.

On the other hand, in cases where the MFSA receives the regulatory submissions after the stipulated deadline but not more than 100 days would have lapsed, the base amount of the administrative penalty as established in Level 1 above applies.

With respect to scenarios where the MFSA receives the regulatory submissions after 100 days from the regulatory deadline but not more than 200 days would have lapsed, the proposed initial administrative penalty to be imposed on the Person will be composed of the base amount as established in Level 1 above plus an additional 20% on the base amount. In scenarios where the MFSA receives the regulatory submissions after 200 days from the regulatory deadline but not more than 300 days would have lapsed, the proposed initial administrative penalty to be imposed on the Person will be composed of the base amount as established in Level 1 above plus an additional 30% on the base amount. In cases where the MFSA receives the regulatory submissions after 300 days from the regulatory deadline but not more than 400 days would have lapsed, the proposed initial administrative penalty to be imposed on the Person will be composed of the base amount as established in Level 1 above plus an additional 40% on the base amount. In cases where the MFSA receives the regulatory submissions after 400 days from the regulatory deadline but not more than 500 days would have lapsed, the proposed initial administrative penalty to be imposed on the Person will be composed of the base amount as established in Level 1 above plus an additional 50% on the base amount. In scenarios where the MFSA receives the regulatory submissions after 500 days from the Authority's deadline but not more than 600 days would have lapsed, the proposed initial administrative penalty to be imposed on the Person will be composed of the base amount as established in Level 1 above plus an additional 60% on the base amount.

Lastly, regulatory submissions received by the MFSA late by more than 600 days from the regulatory deadline, the proposed initial administrative penalty to be imposed on the Person will be composed of the base amount as established in Level 1 above plus an additional 70% on the base amount.

The table below illustrates the methodology adopted by the Authority (as explained above) in determining the quantum of the initial proposed administrative penalty:

Table 1: Initial Proposed Administrative Penalty (on the basis of days delayed)

<i>Days delayed for regulatory reporting submissions</i>	<i>Initial proposed administrative penalty</i>
Up to 100 days	Base amount as established by the MFSA from time-to-time (Refer to Level 1)
More than 100 days up to 200 days	Base amount as established by the MFSA from time-to-time (Refer to Level 1) + 20%
More than 200 days up to 300 days	Base amount as established by the MFSA from time-to-time (Refer to Level 1) + 30%
More than 300 days up to 400 days	Base amount as established by the MFSA from time-to-time (Refer to Level 1) + 40%
More than 400 days up to 500 days	Base amount as established by the MFSA from time-to-time (Refer to Level 1) + 50%
More than 500 days up to 600 days	Base amount as established by the MFSA from time-to-time (Refer to Level 1) + 60%
More than 600 days	Base amount as established by the MFSA from time-to-time (Refer to Level 1) + 70%

Level 3 – Final Proposed Administrative Penalty by Considering the Repetition of the Breach (where applicable)

In addition to the days delayed for regulatory reporting submissions as explained in Level 2 above, in the process of calculating an administrative penalty, the Authority also considers the repeated breach of the same regulatory provision/s in respect of which the MFSA would have already imposed an administrative penalty on the Person during the previous three (3) financial years.

In this respect, where a Person is found to have repeatedly breached 1 or 2 regulatory provisions (the latter would have already been breached by the Person over the previous three financial years), an additional 10% on the initial proposed administrative penalty amount (as determined in Level 2 above) is applied. In cases where a Person is found to have repeatedly breached more than 2 up to 4 regulatory provisions (the latter would have already been breached by the Person over the previous three financial years), an additional 20% on the initial proposed administrative penalty amount (as determined in Level 2 above) is applied.

Where more than 4 regulatory provisions not exceeding 6 in total have been repeatedly breached by a Person (the latter would have already been breached by the Person over the previous three financial years) , an additional 30% on the initial proposed administrative penalty amount (as determined in Level 2 above) is applied. In cases where a Person is found to have repeatedly breached more than 6 up to 8 regulatory provisions (the latter would have already been breached by the Person over the previous three financial years), an additional 40% on the initial proposed administrative penalty amount (as determined in Level 2 above) is applied, while in cases where a Person is found to have repeatedly breached more than 8 up to 10 regulatory provisions (the latter would have already been breached by the Person over

the previous three financial years), an additional 50% on the initial proposed administrative penalty amount (as determined in Level 2 above) is applied.

Finally, where more than 10 regulatory provisions have been repeatedly breached by a Person (the latter would have already been breached by the Person over the previous three financial years), an additional 60% on the initial proposed administrative penalty amount (as determined in Level 2 above) is applied.

The table below illustrates the methodology adopted by the Authority in determining the quantum of the final proposed administrative penalty (where applicable):

Table 2: Final Proposed Administrative Penalty (on the basis of repeated failure)

<i>Repeated breach by a Person</i>	<i>Final proposed administrative penalty</i>
Between 1 and 2 regulatory provisions	Additional 10% on the initial proposed penalty
More than 2 up to 4 regulatory provisions	Additional 20% on the initial proposed penalty
More than 4 up to 6 regulatory provisions	Additional 30% on the initial proposed penalty
More than 6 up to 8 regulatory provisions	Additional 40% on the initial proposed penalty
More than 8 up to 10 regulatory provisions	Additional 50% on the initial proposed penalty
More than 10 regulatory provisions	Additional 60% on the initial proposed penalty

Also, guided by the principles of proportionality, effectiveness and dissuasiveness, when the circumstances warrant and when the Authority is allowed in terms of applicable financial services legislation, it may increase the resulting amount of the final proposed administrative penalty through the application of a daily, weekly or monthly penalty as may be specified in the applicable legislation.

The above-mentioned methodology applies in cases against Persons found to have failed to adhere to regulatory and/or legislative requirements which are considered to be non-material in nature relating to submissions of regulatory reporting to the Authority. Accordingly, an alternative methodology is applied in cases against entities and individuals found to have failed to adhere to other regulatory and/or legislative requirements which are not referred to in this Guidance Note.

Two case studies are presented below to better explain the three-level process in calculating administrative penalties in cases involving Persons found to have breached European or local legislation and regulations, and/or rules, which are considered to be non-material relating to submissions of regulatory reporting to the Authority.

➤ Case Study 1

Level 1 - Setting the Base Amount of Proposed Administrative Penalty

In this case study, it is assumed that the Person submitted the audited financial statements for a particular financial year late by more than 200 days but not more than 300 days have lapsed from the regulatory deadline. It is also assumed that during the previous three (3) financial years, the Person did not breach the regulatory provisions with respect to the submission of audited financial statements.

In this regard, the base amount of the proposed administrative penalty is determined on the basis of a fixed amount established by the Authority from time-to-time with respect to the failure to submit the audited financial statements on time which in this case it is assumed that it would amount to €2,000.

Level 2 - Initial Proposed Administrative Penalty after Considering the Duration of the Potential Breach

For the purpose of the determination of the administrative penalty, the MFSA takes into consideration the days delayed in the submission of regulatory reporting to the Authority. In this case study, in view that the respective Person submitted regulatory reporting to the MFSA after 200 days from the regulatory deadline but not more than 300 days have lapsed, the initial proposed administrative penalty that the MFSA may impose on the Person would amount to €2,000 plus an additional 30% on the latter figure, resulting in an initial proposed administrative penalty of €2,600.

Level 3 - Final Proposed Administrative Penalty after Considering the Repetition of the Potential Breach

For the purpose of the final determination of the proposed final administrative penalty, the MFSA also takes into consideration any repeated breaches by the Person of the same regulatory provision/s and where the MFSA would have already imposed an administrative penalty on the Person during the previous three (3) financial years. In view that in this case it is assumed that the MFSA did not impose an administrative penalty on the Person relating to late submission of its audited financial statements during the previous three (3) financial years, the repeated factor will not be considered by the MFSA. Thus, the final proposed administrative penalty would remain the same as the one determined in Level 2 above i.e. €2,600.

➤ Case Study 2

Level 1 - Setting the Base Amount of Proposed Administrative Penalty

In this case study, it is assumed that the Person submitted the audited financial statements for a particular financial year late by more than 600 days from the regulatory deadline. It is also assumed that in the previous financial year, the MFSA imposed an administrative penalty on the Person with respect to the late submission of its audited financial statements to the MFSA.

In this regard, the base amount of the proposed administrative penalty is determined on the basis of a fixed amount established by the Authority from time-to-time with respect to the failure to submit the audited financial statements on time which in this case I is assumed that it would amount to €10,000.

Level 2 - Initial Proposed Administrative Penalty after Considering the Duration of the Potential Breach

For the purpose of the determination of the administrative penalty, the MFSA takes into consideration the days delayed in the submission of regulatory reporting to the Authority. In this case study, in view that the Person submitted the audited financial statements late by more than 600 days from the regulatory deadline, the initial proposed administrative penalty that the MFSA may impose on the Person would amount to €10,000 plus an additional 70% on the latter figure, resulting in an initial proposed administrative penalty of €17,000.

Level 3 - Final Proposed Administrative Penalty after Considering the Repetition of the Potential Breach

For the purpose of the final determination of the proposed final administrative penalty, the MFSA also takes into consideration any repeated breaches by the Person of the same regulatory provision/s and where the MFSA would have already imposed an administrative penalty on the Person during the previous three (3) financial years. In view that in the previous year the MFSA imposed an administrative penalty on the Person relating to the late submission of its audited financial statements, an additional 10% on the initial proposed administrative penalty amount (as determined in Level 2 above) is applied. Thus, the final proposed administrative penalty would amount to €17,000 plus an additional 10% on the latter figure. Thus, the final proposed administrative penalty would amount to €18,700.

Section 5 Conclusion

By way of conclusion, before a decision is communicated to the Person, the Authority will consider any representations received from the Person, which representations may justify a reconsideration of the proposed administrative penalty.

Lastly, the information presented in this document should not be regarded as binding and the process followed by the MFSA in determining the amount of an administrative penalty for non-material breaches relating to submissions of regulatory reporting to the Authority, is essentially a guideline for the Authority to ensure that administrative penalties are proportionate, effective and dissuasive. This document may be updated from time-to-time as considered appropriate by the Authority.

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