

Administrative Measures & Penalties - Publication Policy

fsuA5

CONTENTS

Introduction 5

Purpose and Applicability 5

Policy Principles 6

Related Policies 9

References 9

Annex I 10

REVISION LOG



| VERSION | DATE ISSUED | DETAILS |
|---------|------------------|---|
| 1.00 | 16 June 2023 | Amended and re-branded Administrative Measures & Penalties – Publication Policy |
| 2.00 | 10 August 2023 | Amended Annex I of the Administrative Measures & Penalties – Publication Policy |
| 3.00 | 11 October 2023 | Amended Annex I of the Administrative Measures & Penalties – Publication Policy |
| 4.00 | 27 November 2023 | Amended the Administrative Measures & Penalties – Publication Policy in relation to the retrospectivity application |
| 5.00 | 4 December 2024 | Amended the section on the Duration of Publication and Administrative Measures & Penalties - Annex |

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 |
| Investigated 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, who are being investigated by the MFSA. |
| Investigation | An investigation carried out by the Enforcement Function in relation to alleged breaches of financial services laws and regulations. |
| MFSA Act | Chapter 330 of the Laws of Malta. The Malta Financial Services Authority Act |

Introduction

The Malta Financial Services Authority ('MFSA' or 'Authority') 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 ('Investigated Person(s)'). As a result of such investigations, the MFSA, through the various laws and regulations falling under its remit, is empowered to impose administrative or disciplinary sanctions or measures on Investigated Persons ('Administrative Measures'). In view of this, Article 16(8) of the Malta Financial Services Authority Act ('MFSA Act') specifically obliges the Authority to publish, in such medium and in such manner and for such duration as may be deemed warranted by the circumstances and the nature and seriousness of the breach or wrongdoing, the Administrative Measure imposed on the Investigated Person.

By means of this policy document, the Authority is hereby establishing the policy principles in relation to the publication of such Administrative Measures (the 'Publication Policy'). The Publication Policy establishes a regime to be adopted by the MFSA in relation to the following principles:

- (a) The medium used for publishing of the Administrative Measures;
- (b) The manner for publishing the imposed Administrative Measures;
- (c) The anonymity principle;
- (d) The duration of the published Administrative Measure; and
- (e) The Monitoring Programme.

Purpose and Applicability

The Publication Policy is being established to refine the process adopted by the MFSA when publishing any Administrative Measures imposed on an Investigated Person.

The objective of this policy document is to ascertain that the public is kept informed about any Administrative Measure imposed by the Authority.

This Publication Policy is being established by the Board of Governors of the MFSA in line with Article 16(8) of the MFSA Act which states that the Board of Governors may, from time to time, establish policies and guidelines regarding the publication of the Administrative Measures.

The Publication Policy shall have a retrospective effect and hence it shall apply to all Administrative Measures imposed by the MFSA, which are still published on the MFSA website.

For the sake of clarity, the Anonymity Principle as further detailed hereunder, shall also apply to those instances where the MFSA enters into a settlement agreement with an Investigated Person and the criteria established hereunder for anonymity, are duly satisfied. However, the Anonymity Principle shall not apply to those cases which are the subject of an appeal in front of the Financial Services Tribunal or where any judicial proceedings are instituted against the MFSA, given that the identity of the investigated person would have been made public during such proceedings.

This Publication Policy will replace and supersede, *in toto*, the current publication policy available on the MFSA website.

Policy Principles

The Publication Policy establishes the following principles:

1. **Medium of Publication** – The Authority's way of communicating with the general public and with keeping the general public informed is, mainly, via the MFSA's website. The MFSA, on a continuous basis, issues notices, guidelines, circulars etc addressed to the general public in order for the latter to be kept informed of business practices and of the expectations of the Authority. Hence, when it comes to the publishing of Administrative Measures, the MFSA publishes the public notice on the MFSA's website. However, the MFSA might also publish such public notice on such other media as may be deemed appropriate in the circumstances. It is important to note that the public notice is always published following the formal notification of the MFSA's decision to the Investigated Person.
2. **Manner of Publication** – Once the decision to impose an Administrative Measure is notified to the Investigated Person, a public notice is issued on the MFSA website. The public notice shall include at least information on the details of the findings of the Authority and the identity of the person, unless the law states otherwise or the matter falls under the anonymity principle, as detailed below (Point 3 hereunder). Where and as applicable, the public notice published on the MFSA website will indicate clearly whether the imposed Administrative Measure has been appealed or otherwise. However, it is pertinent to note that the public notice issued on the MFSA website is intended to serve as a summary of the Authority's decision.
3. **Anonymity of Publication** – As a general rule, the MFSA believes that the naming of persons, including licence-holders that have been sanctioned for breaching provisions of law, will lead to a greater awareness of the standards which should guide the activities and the conduct of operators in the financial services industry. Nonetheless, and unless the law states otherwise, the MFSA may decide to issue the public notice

in relation to an imposed Administrative Measure on an anonymous basis if the following circumstances exist:

Scenario 1:

- a) The Administrative Measure imposed is in relation to a non-material breach, a list of which is hereby being annexed as Annex I; **and**
- b) The Administrative Measure imposed is that of an administrative penalty which does not exceed thirty thousand Euro (€30,000).

In the case where the MFSA imposes several breaches on an Investigated Person (as part of one Decision Letter), with a number of them being deemed as non-material breaches whilst others deemed as material breaches, the material breaches will prevail and the MFSA will be empowered to consider the case in its totality, hence as if all breaches were material breaches, and the anonymity principles as described under Scenario 1 above will not be applicable.

Scenario 2:

Exceptionally, the MFSA may also consider publishing on an anonymous basis in the below circumstances:

- a) in the case where the publication would jeopardise the stability of the financial market/s or an ongoing investigation; **or**
- b) in the case where the publication would cause, insofar as it can be determined, disproportionate damage to the person involved.

Hence, if the Administrative Measure is in relation to a non-material breach and falls under the threshold of thirty thousand Euro (€30,000), the MFSA will automatically issue the public notice on an anonymous basis.

On the other hand, in exceptional circumstances and unless the law states otherwise, when following a case-by-case assessment, the MFSA believes that the publication of the identity of the Investigated Person would either jeopardise the stability of the financial market/s or an ongoing investigation or would cause, insofar as it can be determined, disproportionate damage to the person involved, the MFSA will be empowered to publish the Administrative Measure on an anonymous basis. For the MFSA to be able to carry out such assessment, the Investigated Person has the onus to prove that the case satisfies one of the conditions under Scenario 2 and hence merits the case to be published on an anonymous basis because publication on an anonymous basis is the exception and not the rule. The Authority is to be provided with detailed arguments, quantifiable, if possible, as to the reasons why anonymisation is

to be granted under Scenario 2. Only if provided with such information will the MFSA be able to analyse and decide accordingly.

4. **Duration of Publication** – The public notice issued on the MFSA website in relation to an imposed Administrative Measure, shall remain so published for a specific period, depending on the nature and seriousness of the breach or wrongdoing.

The following are the criteria being established in relation to the duration of publication of Administrative Measures (except for Settlement Notices):

- (a) A notice to the public in respect of a fine not exceeding € 3,000, a warning, a reprimand or other minor infringement shall remain posted on the website for a period of two (2) years.
- (b) A notice to the public in respect of a fine exceeding € 3,000 but not exceeding € 25,000, or of more serious infringements shall remain posted on the website for a period of five (5) years.
- (c) A notice to the public in respect of serious infringements, including suspension or restriction of an authorisation issued by the MFSA for regulatory purposes (not a voluntary request for suspension or restriction) and fines exceeding € 25,000 shall remain posted on the website for a period of ten (10) years.
- (d) A notice to the public in respect of a cancellation of a licence or any other authorisation, registration, recognition issued by the MFSA for regulatory purposes (not a voluntary surrender) shall not be removed from the website.
- (e) A warning of a general nature shall be removed from the website only when it is established that there is no further threat to the public. The removal of such warnings is not tied to a pre-determined number of years. The MFSA seeks to ensure high standards of conduct and management throughout the financial system.

The following are the criteria being established in relation to the duration of publication of Administrative Measures in the case of Settlement Notices:

- (a) A notice to the public in respect of a fine not exceeding € 3,000 or other minor infringement shall remain posted on the website for a period of one (1) year.
- (b) A notice to the public in respect of a fine exceeding € 3,000 but not exceeding € 25,000, or of more serious infringements shall remain posted on the website for a period of three (3) years.
- (c) A notice to the public in respect of serious infringements, including suspension or restriction of an authorisation issued by the MFSA for regulatory purposes (not a voluntary request for suspension or restriction)

and fines exceeding € 25,000 shall remain posted on the website for a period of five (5) years.

5. **Monitoring of the Public Notices published on the website** – A yearly assessment is to be carried out to monitor all the published Administrative Measures. This will ensure that all the published Administrative Measures follow the publication criteria and if the respective period expires, such publication is removed from the MFSA website.

Related Policies

- [Settlement Policy](#)

References

- [Malta Financial Services Authority Act \(Chapter 330 of the Laws of Malta\)](#)

Annex I

The below is a list of breaches which the Authority considers as non-material breaches as at the date of this Policy. The below list is an **exhaustive** list and the breaches which are not included in the list, are to be deemed as material breaches. However, the below list might be updated in the case of new requirements/laws which come into force or any changes which are affected to the current requirements/laws and which are of the same characteristics as those listed in the below table, hence merit to be treated as non-material breaches as well.

| Financial Services Sector | Non-Material Breach |
|--|---|
| Investment Services Firms / Collective Investment Schemes | Submission of annual report |
| | Submission of half yearly report |
| | Submission of audited financial statements |
| | Submission of auditor's management letter |
| | Submission of custodian's report |
| | Submission of auditor's report |
| | Submission of the Financial Derivatives Instruments 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 |
| | Submission of list of financial instruments |
| | Submission of the annual fund return |
| | Submission of the representation sheet (related to the annual fund return) |
| | Submission of the auditor's report (related to the annual fund return) |
| | Submission of the self-assessment certificate |
| | Submission of director's declaration on manager (applicable to PIFs managed by a Swiss SRO) |
| | Submission of the interim MiFiD Firms Quarterly Reporting |
| | Submission of the report of factual findings in connection to circularisation exercise |
| | Submission of Annex I,III and VIII |
| | Submission of the MiFID Firms Quarterly Reporting with audited figures for the section pertaining to Prudential Supervision |
| | Submission of Supervisory Fee Calculation from the MiFID Firms Quarterly Reporting |
| | Confirmations tab of the MiFID Firms Quarterly Reporting |
| | Submission of the Recovery and Resolutions Plan |
| | Failure to pay the supervisory fees due to the MFSA |
| Listed Entities | Submission of PDMR notifications (also applicable to PDMRs & PCAs) |

| | |
|-----------------------------------|---|
| | Reporting obligation of derivative transactions to trade repositories |
| | Reporting obligation of securities financing transactions to trade repositories |
| | Publication of half-yearly / annual financial reports |
| | Failure to pay the supervisory fees due to the MFSA |
| Company Services Providers | Submission of annual compliance return |
| | Submission of annual income statement and balance sheet, and comprehensive notes to the income statement and balance sheet. |
| | Submission of audited financial statements |
| | Submission of auditor's management letter |
| | Failure to pay the supervisory fees due to the MFSA |
| Trustees | Submission of annual compliance return |
| | Submission of audited financial statements |
| | 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 |
| | Failure to pay the supervisory fees due to the MFSA |
| Credit Institutions | Submission of the audited financial statements |
| | Submission of the auditor's management letter |
| | Failure to pay the supervisory fees due to the MFSA |
| Financial Institutions | Submission of the audited financial statements |
| | Submission of the auditor's management letter |
| | Failure to pay the supervisory fees due to the MFSA |
| 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, Report on No Material Changes ('NMC') and 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 an insurance holding company) |
| | Conduct related data |
| | Failure to pay the supervisory fees due to the MFSA |
| 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 |
| | Failure to pay the supervisory fees due to the MFSA |
| Pension Schemes / Retirement Scheme Administrators | Submission of half-yearly/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 audited annual financial return |
| | Failure to pay the supervisory fees due to the MFSA |
| VFA Service Providers | Submission of audited financial statements |
| | Submission of auditor's report & opinion |
| | Submission of auditor's management letter |
| | Submission of IT audit report |
| | Submission of compliance certificate |
| | Submission of soft copy of the automated annual VFASP Return |
| | Submission of original representations sheet of the annual VFASP return |
| | Submission of soft copy of the automated interim VFASP return |
| | Submission of original representations sheet of the interim financial return |
| | Submission of the annual audited return & VFASP respective representations sheet |
| | Failure to pay the supervisory fees due to the MFSA |
| VFA Agents | Failure to pay the supervisory fees due to the MFSA |
| VFA Issuers | Submission of compliance certificate |
| | Failure to pay the supervisory fees due to the MFSA |