

Overview of the Enforcement Work Carried Out by the MFSA in 2022

The Malta Financial Services Authority (“MFSA” or the “Authority”) aims to ensure that all entities and/or individuals authorised to provide financial services, in or from within Malta, as well as those falling within its regulatory or supervisory remit remain compliant with the applicable EU and local financial services legislation and regulatory framework.

All entities regulated to provide financial services are subject to ongoing supervisory work undertaken through various onsite and desk-based supervisory work. By virtue of such, the MFSA continuously assesses the regulated entities’ compliance with all ongoing requirements applicable in terms of the financial services legislation and the regulatory framework. Individuals approved by the MFSA to carry out any approved positions within a licenced entity who are subject to the fitness and properness assessment are also reminded they are to satisfy such ‘fit and proper’ requirement on an ongoing basis.

This document summarises the work that has been carried out by the Enforcement Function within the MFSA in 2022.

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Overview of Enforcement Investigations

The Enforcement Function is responsible for conducting investigations into potential breaches of financial services laws and/or regulations by entities and/or individuals authorised by the MFSA. Such potential breaches may be brought to the Enforcement Function’s attention through various sources such as by the public and also, by the supervisory functions within the Authority.

Further to the outcome of such investigations, should the Enforcement Function determine that there appears to be a breach of any financial services laws and/or regulations, a recommendation is made to the Authority’s decision-making body for any enforcement action to be imposed against the entities and/or individuals investigated. Prior to the recommendation to the decision-making body for the imposition of a regulatory action, the Enforcement Function ensures that such action would be deemed to be fair, proportionate, dissuasive and effective. By virtue of such regulatory actions, the MFSA intends to educate those subject to such action as well as, to deter future non-compliance.

The list¹ below includes an example of the regulatory actions which may be imposed on entities and/or individuals authorised by the MFSA and also, in cases relating to entities or individuals potentially offering financial services without having obtained the required authorisations by the Authority:

- [a] A public reprimand being issued on the MFSA's website or any other medium as may be deemed warranted;
- [b] The imposition of Directives (which may include restrictive Directives such as the ceasing of on-boarding new clients, transfer of assets, transfer of existing clients to other Licence Holders and/or other actions such as the engaging of a Qualified/Competent person);
- [c] Suspension of a licence (partially or full);
- [d] Removal or restriction of authorised individuals;
- [e] The imposition of an administrative penalty; and
- [f] Cancellation of a licence.

In 2022, the Enforcement Function had a total of 195 ongoing investigations which had come to its attention through various sources. In the course of the supervisory work carried out by the Supervisory Functions, a substantial number of investigations were referred to the Enforcement Function relating to cases of non-submission of statutory documentation by regulated entities. As will be further highlighted below, investigations were also conducted which involved persons or entities, licensed or otherwise, suspected of undertaking licensable activities without having obtained the necessary authorisations. Other investigations included potential breaches whereby the Authority considered that regulated entities in question appeared to not have adequate governance arrangements in place.

¹ The list of regulatory actions included in this document is not exhaustive of all the actions that may be imposed by the Authority. Therefore, the Enforcement Function may recommend to the decision-making body other regulatory actions not included in this list.

Figure 1: Investigations per Sector

When an authorised entity has been issued more than one authorisation by the MFSA, the investigation has been recorded against the activity being investigated. This data includes investigations carried out in relation to the non-submission of statutory documentation.

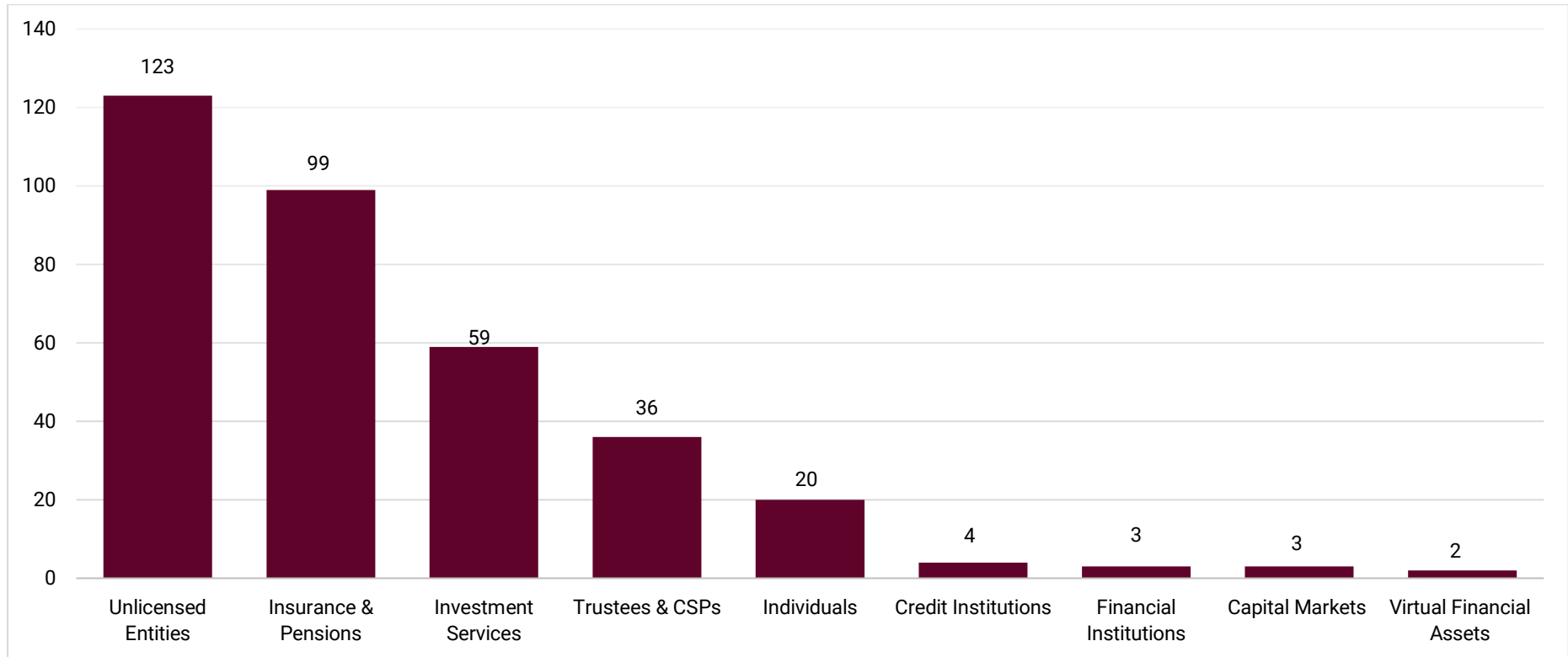


Figure 1 includes all investigations handled by the Enforcement Function in 2022 including those carried forward from previous years.

Figure 2: Issues Identified & Investigated

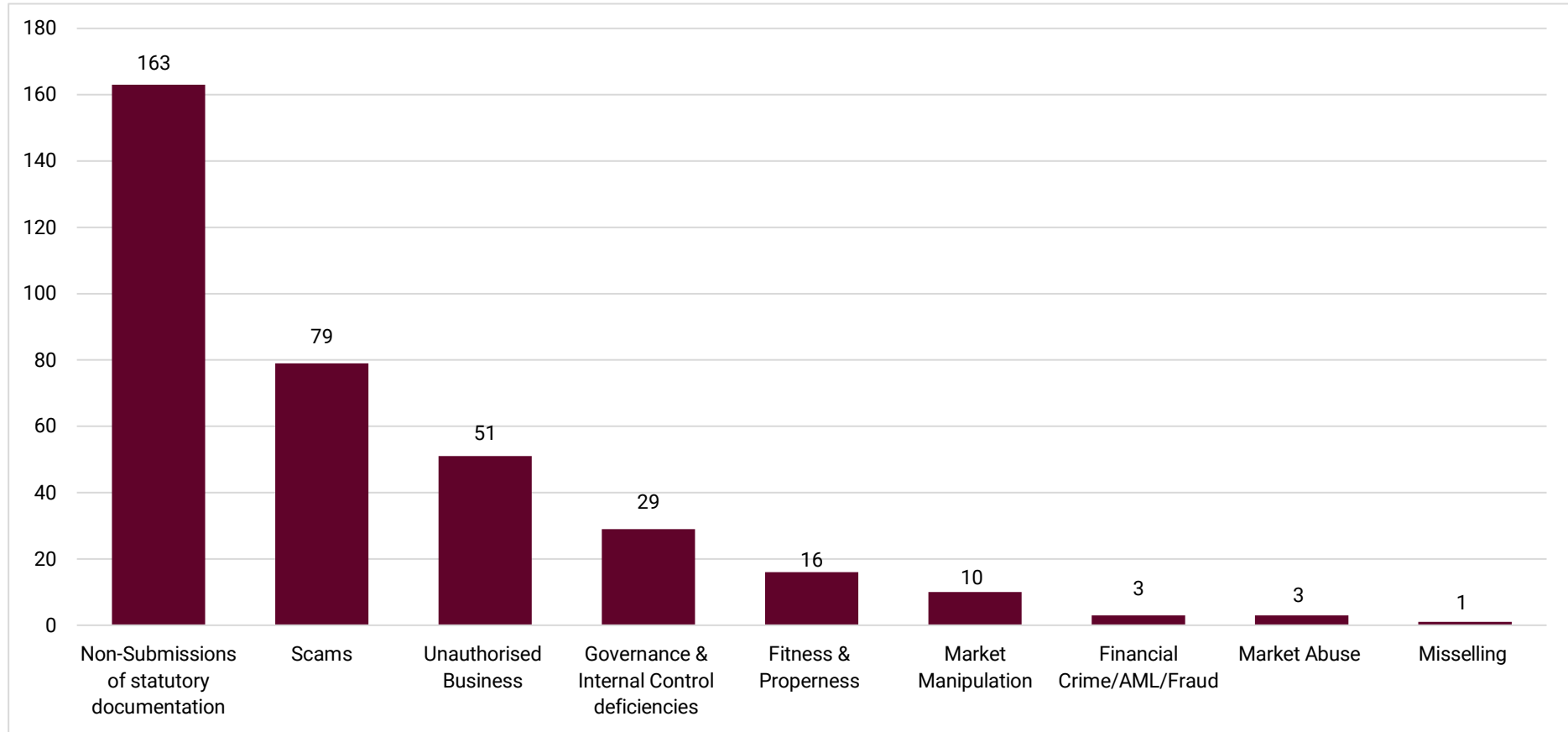


Figure 2 – The issues outlined are those identified in 2022 by the Enforcement Function both in concluded investigations and also, in investigations that were ongoing in 2022.

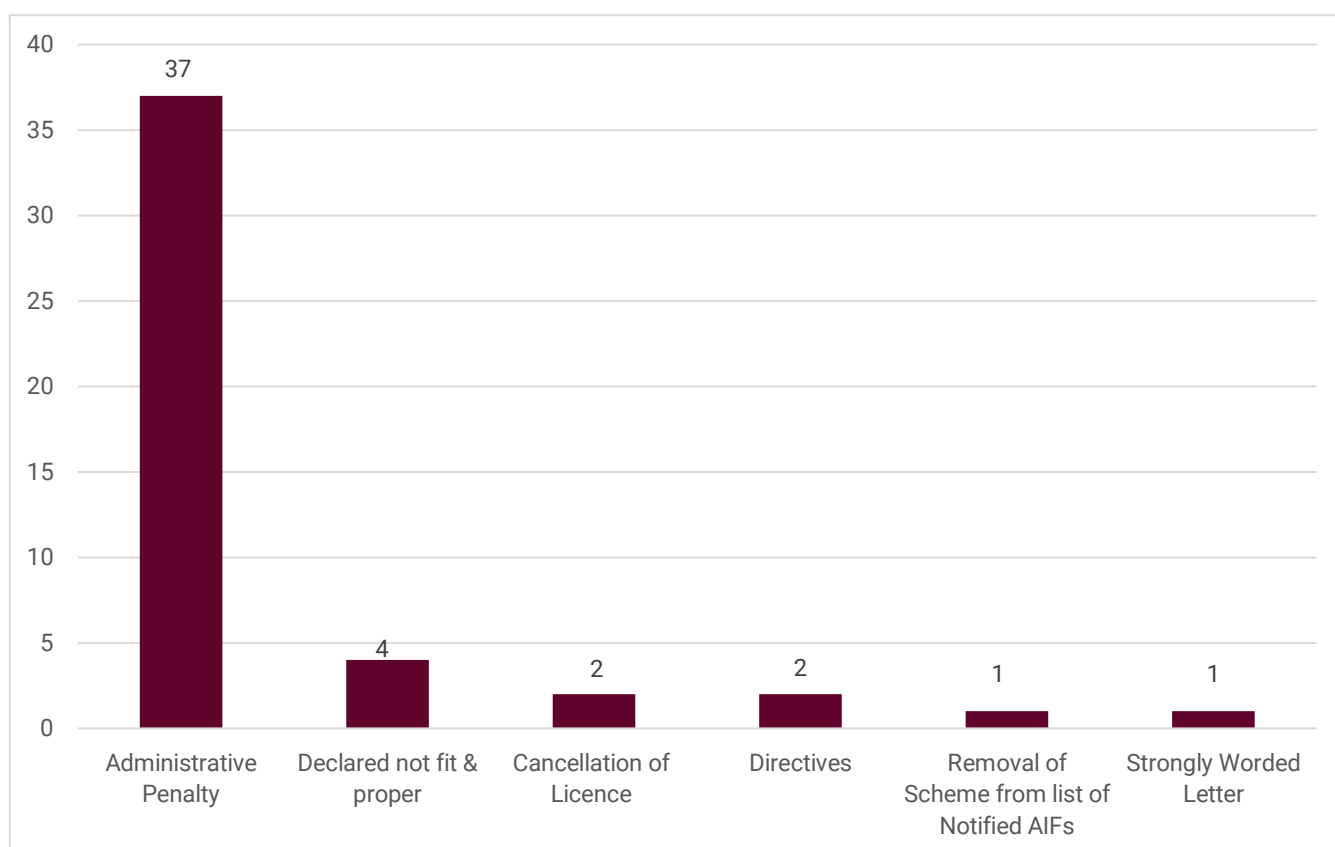
Overview of Enforcement Actions

The scope of an investigation is to obtain a full understanding of the issues identified and determine whether an enforcement action is merited. It should be noted that not all investigations are considered to merit such actions.

If on the basis of the investigation, Enforcement deems that it is appropriate, recommendations are made to the decision-making body of the Authority of what administrative measures should be taken by the MFSA.

The total sum of the penalties issued in 2022 amounted to €147,445 which included a total of 34 cases relating to late/non-submission of statutory documentation. A total of 47 enforcement actions, as outlined in Figure 3 below, were imposed by the Malta Financial Services Authority which can be viewed on the official website of the MFSA: [Administrative Measures and Penalties - MFSA](#).

Figure 3: Administrative Measures imposed in 2022



Non-Submission of Statutory Documentation

The Authority notes that, 34 out of the 47 enforcement actions imposed in 2022 related to the non-submission of statutory documentation. In such cases, administrative penalties were imposed by the MFSA, and which actions made up *circa* 80% of the fines issued last year.

The regulatory framework applicable to financial services entities stipulates various requirements for the submission of documents within set timeframes. The MFSA places significant importance to timely reporting of such statutory documentation. Timely reporting of all submissions is of utmost importance for the MFSA to be able carry out its supervisory work. This enables the Authority to understand whether licenced entities are complying with its rules. Authorised entities are required and expected to take all reasonable measures to submit to the MFSA such documentation in a timely manner, irrespective of whether the relevant task has been delegated to other third-party service providers.

Authorised entities are reminded to adhere to the timeframes and deadlines expressly set out in any applicable legislation, rules and regulations.

Figure 4: Penalties imposed per Sector

Sectors	Total No. of Authorised Entities	Total amount of € imposed
Retirement Scheme Administrators	11	€54,325
Company Service Providers	16	€37,500
Collective Investment Schemes	4	€16,350
Investment Managers	2	€4,900
Fund Administrators	1	€4,200

Unauthorised Business

In 2022, a number of investigations were also carried out relating to entities or individuals potentially offering financial services without having obtained the required authorisations by the Authority. Similarly, the Enforcement Function also investigated suspicious activity or dubious schemes which appeared to be of a detriment to consumers, such as clone companies and unlicensed exchange platforms.

Following such investigations, 27 Public Warnings and 3 Consumer Notices were issued by the MFSA. These were published with the aim of ensuring consumers' safety on various categories of scams. The MFSA submitted 3 reports to the Malta Police Force in relation to potential fraudulent schemes.

As the Authority has seen an increase in financial scams being reported, the Enforcement Function has issued a publication intended to give a snapshot of the most popular scams, tips on how to detect red flags and avoid getting scammed. This publication can be found here: [Financial Scams and How to Avoid Them](#).

Fitness and Properness

The fitness and properness requirement is an ongoing requirement. Therefore, once approved, an applicant will continue to be subject to ongoing supervision by the Authority. Occasionally, such ongoing supervision may lead to the re-assessment of the suitability of an applicant's fitness and properness.

In 2022, the Enforcement Function investigated a total of **16** individuals to determine if these individuals continued to fulfil the criteria against which the MFSA assesses fitness and properness. These four criteria are:

- [a] Competence;
- [b] Reputation;
- [c] Conflict of Interest and Independence of Mind; and
- [d] Time Commitment

Following such investigations, **4** individuals were deemed as not being fit and proper and thus, were prohibited from holding any positions which necessitate the Authority's approval and/or authorisation.

Notifications to be submitted by Persons Discharging Managerial Responsibility

The MFSA undertook a number of supervisory visits during which a lack of awareness and knowledge in relation to the obligations which Persons Discharging Managerial Responsibility ("PDMRs") were identified. In view of such, a number of investigations were carried out by the Enforcement Function relating to potential failures by PDMRs to submit to the Authority notifications of transactions conducted on their own account relating to the shares or debt instruments of a particular issuer. The Authority is to be notified of such if the total transactions executed by the PDMRs, within a calendar year, exceeded the amount of €5,000. These notifications are to be submitted to the MFSA promptly and not later than three business days after the date of the transactions.

Following the investigations undertaken in 2022, the Authority imposed 3 administrative penalties amounting to a total of €27,170 in view of the failure of a number of PDMRs to submit such notifications to the MFSA. During such investigations, the Enforcement Function determined that despite the Authority's numerous reminders via letters sent to the issuers and the circulars issued by the MFSA relating to such notifications, the sanctioned PDMRs still failed to abide by such requirement. It should be pointed out that by virtue of the circulars issued, the Authority allowed for notifications to be made late in relation to transactions undertaken however, the transactions undertaken by the sanctioned PDMRs remained unnotified.

Concluding Remarks



In its continuous efforts to enhance transparency and accountability, the MFSA is publishing this paper to provide an overview of the enforcement work carried out by the MFSA in 2022. This is the first of a number of publications we intend publishing relating to the MFSA's enforcement work and it provides an overview of the investigations and enforcement action taken subdivided according to the different sectors. Enforcement is an important tool in ensuring that the MFSA complies with its statutory obligations and delivers on its strategic priorities. Over the past few years, the MFSA has embarked on a journey to improve its internal processes to ensure that any action taken is dissuasive and effective whilst also being fair and proportionate. The work undertaken on the penalty calculation model and the resulting Guidelines issued to the public on how the MFSA calculates administrative penalties, the introduction of a Settlement policy and the revised administrative sanctions publication policy are some of the outcome resulting from this review. In line with the Strategic Statement 2023-2025 that the MFSA published in February of this year, the MFSA is committed to improve its efficiency and effectiveness as well as continue working on increasing the transparency of its enforcement policies and procedures.

Dr Michelle Mizzi Buontempo - Chief Officer Enforcement



The publication of this document is considered to be another important step towards ensuring a greater level of transparency by the MFSA. It is one of the MFSA's priorities to make use of regulatory powers to keep poor conduct in check, to take timely and proportionate enforcement action and calling out bad practices. Such action is taken when necessary in order to protect the integrity of the financial services sector and the interests of investors. The areas of weaknesses identified in this document should highlight aspects of regulations which may require greater attention so as to ensure a higher level of compliance.

Edward Grech - Head, Enforcement Function

The MFSA is committed to a fair and proportionate use of its enforcement powers to achieve effective outcomes. This will aid to deter future infringements of all applicable laws, rules and regulations and secure the integrity of the financial services sector.

All work undertaken by the Enforcement Function also aims to ensure the protection of consumers from potential harm and financial losses that may be caused by the misconduct of authorised entities as well as, guidance on identifying red flags in respect to financial scams.

Any comments and, or queries in relation to this publication may be submitted, *via* email to enforcement@mfsa.mt

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