

# **Overview of the Enforcement Work Carried Out by the MFSA in 2023**

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 2023.

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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 list<sup>1</sup> 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 2023, the Enforcement Function had a total of 474 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.

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<sup>1</sup> 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.

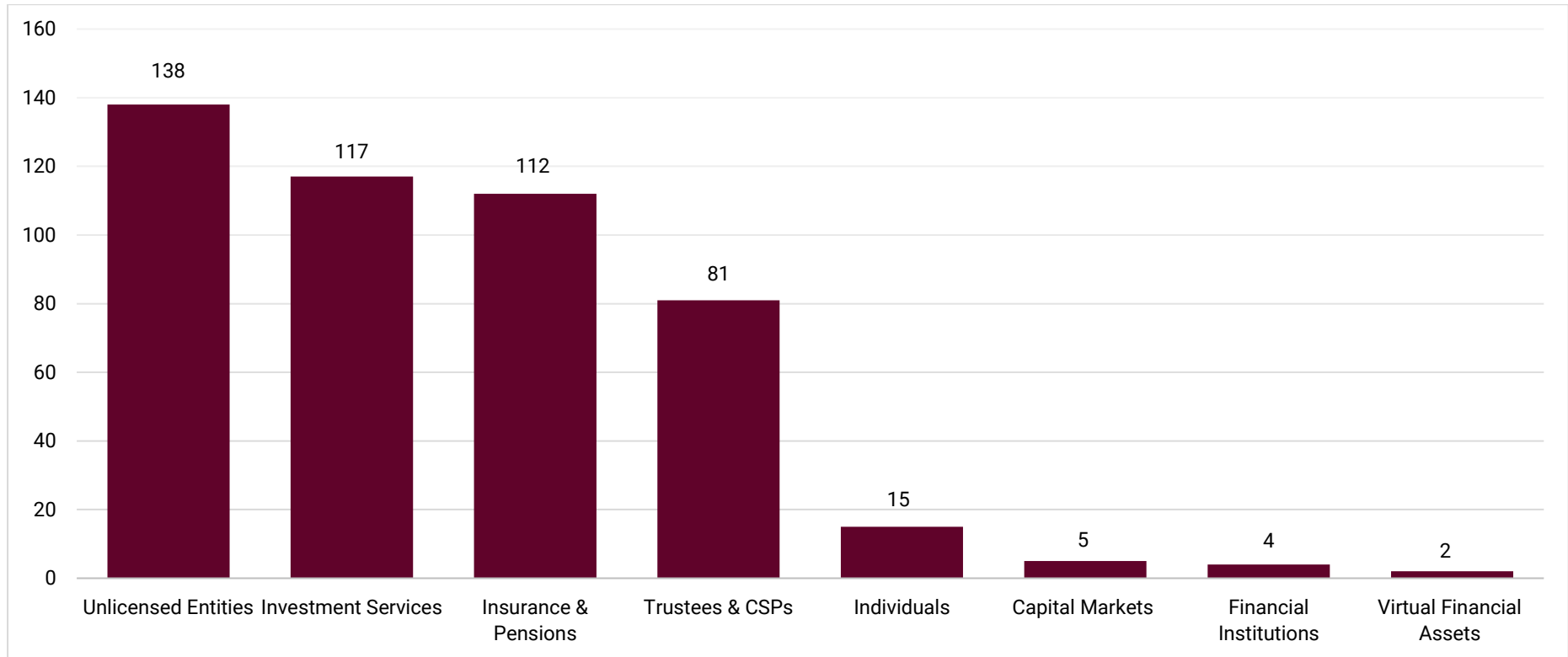
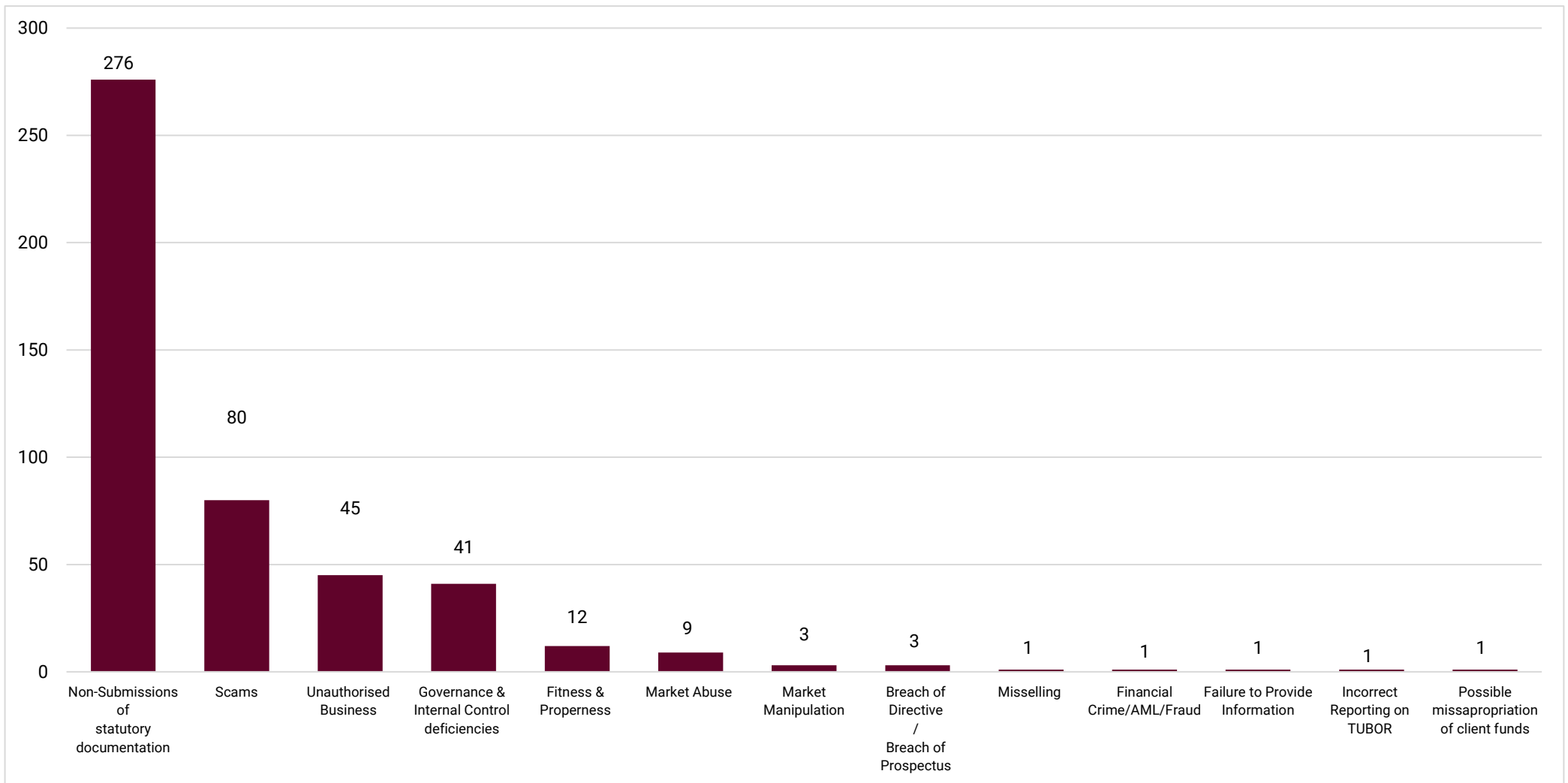


Figure 1 includes all investigations handled by the Enforcement Function in 2023 including those carried forward from previous years.

**Figure 2: Issues Identified & Investigated**



**Figure 2 – The issues outlined are those identified in 2023 by the Enforcement Function both in concluded investigations and also, in investigations that were ongoing in 2023.**

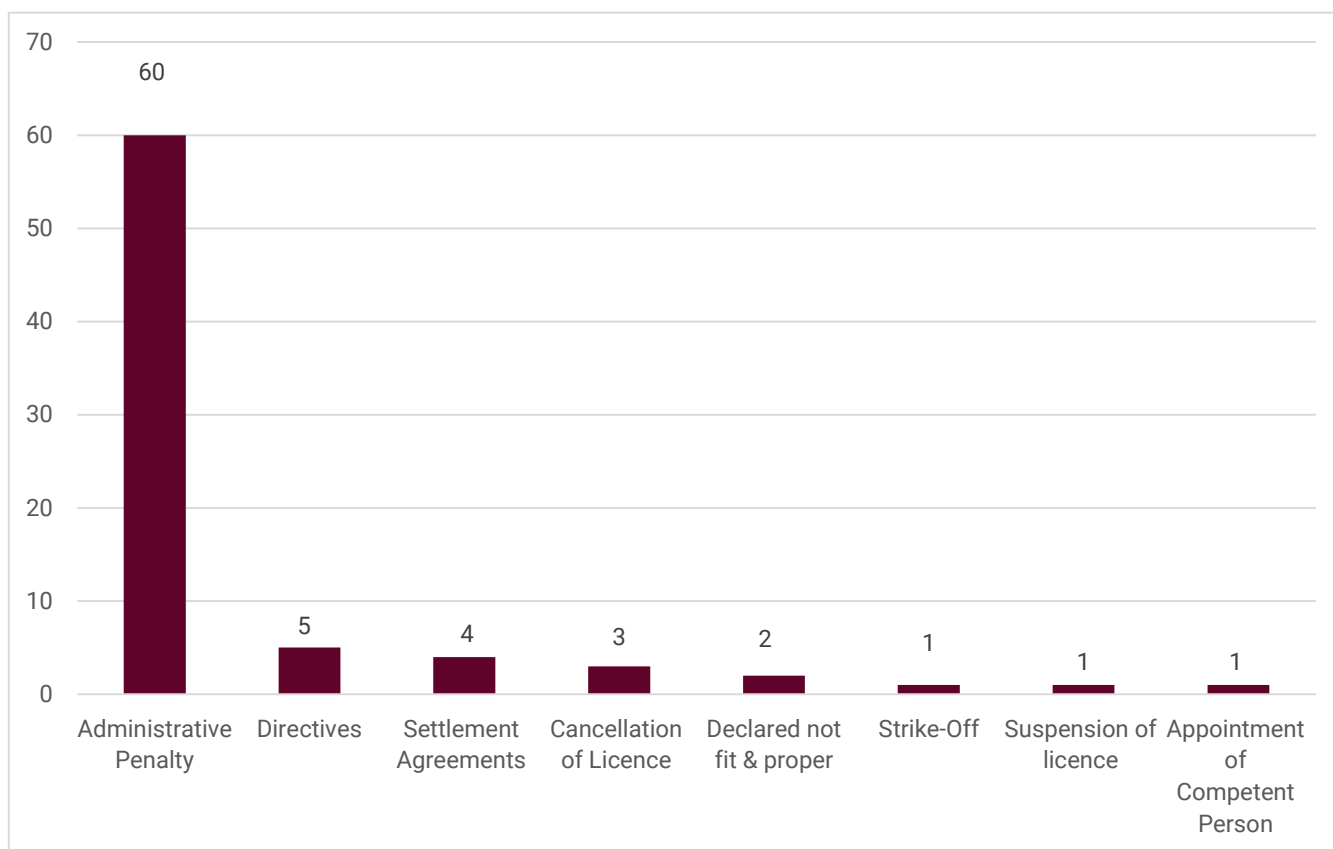
## Overview of Enforcement Actions

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 2023 amounted to €444,800, which included a total of 59 cases relating to non-submission of statutory documents and also, 4 cases in relation to which the Authority entered into a settlement agreement with the respective Licence Holders. A total of 77 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 2023**



## **Settlement Agreements**

As outlined in Figure 3 above, in 2023 the MFSA entered into 4 Settlement Agreements which entailed the taking of an administrative measure by the MFSA which would have already been agreed to between the Licence Holder and the MFSA during the settlement discussions. The possibility of resolving investigations in the shortest time possible, by entering into Settlement Agreements, was provided for by the *'Settlement Policy'* published by the Authority on 8 November 2022.

By means of the *'Settlement Policy'*, the Authority set out the regime to be adopted by the MFSA when entering into Settlement Agreements and the process which is to be followed when entering into settlement discussions. The MFSA would like to point out that, in the interest of time, a settlement proposal letter is issued to the Investigated Person together with, the Authority's minded position. However, Investigated Persons are to be aware that there is the possibility to enter into settlement discussions from the moment that they become aware that the Authority has commenced an investigation. Investigated Persons can request such discussions, once an investigation has commenced, as long as the potential breaches do not fall under one of the exceptions set out in the *'Settlement Policy'*.

In the course of settlement discussions, prior to agreeing to specific terms of settlement, the Authority considers the circumstances of the case, such as the level of co-operation and goodwill shown by the Investigated Person. In taking such into consideration, and as a means of goodwill on the part of the Authority, the MFSA would in turn agree to a number of terms of settlement including, a possible reduction in the quantum of the administrative penalty.

## **Non-Submission of Statutory Documentation**

In 2023, the Authority continued to impose administrative penalties relating to the non-submission of statutory documentation and 61 out of the 77 enforcement actions imposed in 2023 related to such breaches. These administrative penalties 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 would like to reiterate that it 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 in relation to Non-Submission of Statutory Documentation**

<b>Sectors</b>	<b>Total No. of Authorised Entities</b>	<b>Total amount of € imposed</b>
<b>Collective Investment Schemes</b>	32	€82,450
<b>Insurance Undertakings</b>	23	€61,900
<b>Investment Firms</b>	2	€1,100
<b>Trustees</b>	2	€8,000
<b>Alternative Investment Fund Managers</b>	1	€850
<b>Retirement Scheme Administrators</b>	1	€500

## **Market Abuse**

In 2018, the MFSA started holding a number of onsite compliance meetings relating to Regulation 596/2014 on market abuse (“the Regulation”), with investment firms and/or issuers, falling within the scope of the Regulation. The purpose of these onsite compliance meetings was for the Authority to verify the extent of the implementation of the Regulation. As of 2023, the Authority began carrying out supervisory inspections whereby the investment firms and/or issuers, falling within the scope of the Regulation, are required and expected to prove proper and full adherence to the respective requirements emanating from the Regulation and its delegated and implementing regulations.

Following the onsite compliance meetings and the supervisory inspections carried by the MFSA, a number of investigations were carried out by the Enforcement Function relating to potential failures by investment firms and/or issuers of the Regulation. During such investigations, the Enforcement Function determined that despite the numerous circulars issued by the MFSA, a number of investment firms and/or issuers appeared to have failed to comply with the respective requirements emanating from the Regulation and its delegated and implementing regulations.

It should be pointed out that by means of the circulars issued by the MFSA, recommendations were made of what is considered to be best practice in ensuring high standards of compliance



with the Regulation. The obligation to ensure that investment firms and/or issuers, falling within the scope of the Regulation, comply with these requirements, rests solely with their directors.

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