



GOVERNMENT OF MALTA

Government response to the Consultation on the Proposed Settlement Procedure under the Malta Financial Services Authority Act

7th April 2022

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Executive Summary

Introduction and overview

1. A brief introduction about the subject.

The MFSA, by virtue of the powers conferred to it under the Malta Financial Services Authority Act investigates breaches of financial services laws, regulations and MFSA Rules on licence holders and on persons authorised by it or falling under its regulatory or supervisory functions. The MFSA aims to resolve investigations in the shortest time possible to ensure efficiency and productivity. One method of achieving the foregoing is by entering into a settlement agreement with investigated persons. In order to achieve this aim, the MFSA sought to further strengthen its position by introducing a specific power to enter into settlement discussions and agreements in the MFSA Act itself. In parallel with this, the MFSA is also working on establishing a Settlement Policy, which would need to be followed in cases where the MFSA enters into settlement discussions and agreements with an investigated person. A draft legislative procedure has been issued for consultation to the public in relation to the proposed power of the MFSA to enter into settlement discussions and agreements with investigated persons.

2. The public consultation date.

Include the objective and purpose of the public consultation.

On 21 February 2022 a public consultation on the Proposed Settlement Procedure under the Malta Financial Services Authority Act was issued. The purpose of this consultation document was to highlight the changes proposed to be made to the MFSA Act to include a specific provision empowering the MFSA to enter into settlement agreements. The proposed legislative provision caters for instances where the MFSA and the person concerned agree on the terms of settlement.

3. This consultation sought views on:

The text of the proposed legislative provision in relation to the power of the MFSA to enter into settlement discussions and agreements and to also, amongst others, grant the power to the MFSA to take a separate enforcement action should the terms of a settlement agreement not be adhered to.

Responses to the consultation and process used to seek stakeholder views

This document is the Government Response to this consultation and sets out the Government's decisions on these matters.

4. The closing date of the public consultation. Which methods were used to receive the feedback. The total amount of responses. From whom you received the feedback.

The public consultation closed on 14 March 2022. The consultation document was available online, both on konsultazzjoni.gov.mt and also on the MFSA website. Responses were accepted via email addressed to the Enforcement Function at the MFSA.

In total, there were 3 responses. These were received from associations representing industries.

5. Include (if any) meetings with stakeholders and list who the stakeholders were.

N/A

Summary of responses and decisions

The following is a summary of the consultation responses received. We would like to thank all those who took the time to respond to the consultation.

6. Statistics.

- Total feedback received: 3
- Total feedback received by individuals: 0
- Total feedback received by organisations: 3
- Total feedback received through email: 3
- Total feedback received through online form: N/A
- Total feedback received by post: N/A

7. Summary of feedback received.

All the respondents were in favour of the introduction of the legislative provision in the MFSA Act to further strengthen the power of the MFSA to resolve investigations by means of a settlement agreement, given that this will also benefit the investigated person.

The respondents brought forward a number of queries/comments, mostly in relation to the following matters:

1. *Applicability of the legislative provision on settlement* – The respondents sought clarity on the applicability of the legislative provision, that is, on whether the MFSA will have the power to enter into settlement agreements with both natural and legal persons. The MFSA would like to clarify that the text of the first paragraph of the legislative provision captures instances where the MFSA can enter into settlement agreements with legal persons who breached or are breaching any provision of the laws falling under the remit of the MFSA as well as with natural persons concerned in the ownership and/or management of a licence-holder who is participating or has participated in such a breach. Given that the MFSA is empowered to take enforcement action on both natural and legal persons, then it is also important for the MFSA to have the power to resolve investigations by means of settlement with both natural and legal persons. Finally, for the sake of clarity, the term ‘person’ as used

in the proposed legislative provision refers to both natural and legal persons and this is in line with the definition of 'person' under Article 2 of the MFSA Act which refers to a "person" as including any entity corporate or unincorporated which may hold a licence or other authorisation issued by the Authority or which falls within the supervisory or regulatory authority of the Authority.

2. *The procedure to be followed by the MFSA in the case of breaches of settlement terms* – It is important to point out that, while hoping that this will only occur in remote cases, in instances where a settlement agreement has been signed but the investigated person does not adhere to the settlement terms, the MFSA will be empowered to take separate enforcement action in relation to the breach of the settlement term. Failure to comply with the settlement terms will be regarded as a breach of a provision of the law and hence remediation in those circumstances will not be applicable.
3. *The maximum penalty of €150,000 which the MFSA will be empowered to impose in the case of a breach of settlement terms* – The respondents specifically queried the manner in which the MFSA will be calculating the penalty when there is a breach of a settlement term and the reasoning behind the establishment of this threshold. The MFSA would like to clarify that it will be calculating the penalty on a case-by-case basis, keeping in mind a number of factors such as proportionality. It is important to explain that a breach of the settlement terms will constitute a breach of the provision of the MFSA Act and hence the reason why the threshold of €150,000 was established. The breach of a settlement term is a totally different and separate breach from the original breach which led to the agreement. Moreover, the maximum penalty of €150,000 is being proposed for each failure committed and this is in line with Article 16(4) of the MFSA Act which caters for a maximum penalty of €150,000 for each infringement or failure to comply with any provision of the MFSA Act.
4. *The possibility to appeal a decision of the MFSA in relation to the breach of a settlement term* – A separate investigation will need to be conducted in the case of a breach of settlement terms and hence this will entail the issuing of a decision by the MFSA. The provisions of the MFSA Act in relation to appeals will apply.
5. *Policies and Procedures* – *The respondents requested that any policies issued by the MFSA in respect of settlement be issued for consultation and that consultation with the industry in this respect remains ongoing.* The MFSA would like to reiterate the fact that the principles proposed in the settlement policy have been issued for consultation. The MFSA will also publish the final Settlement Policy and any updates thereto. The MFSA has noted the feedback received in this respect and the interest of respondents in the Settlement Policy and hence will keep this in mind for future reference, should the need arise to amend the Settlement Policy.

8. Your assessment and the Government's decision (list the Government's decisions).

Having reviewed all the feedback received, the Government decides to go ahead with introducing the legislative provision as proposed in the MFSA Act.

Implementation

9. When you intend to implement the decisions

Subject to Parliamentary approval, we intend to implement our decision within the next few months.

Contact Details

If you have any questions regarding this response, please contact: Charmaine.gatt@gov.mt