

# Settlement Policy

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8 November 2022

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# REVISIONS LOG

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VERSION	DATE ISSUED	DETAILS
1.00	8 November 2022	Settlement Policy Issued

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# DEFINITIONS

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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.
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.
Investigation	An investigation being carried out by the Enforcement Function in relation to alleged breaches of financial services laws and regulations.
Investigated Person	A natural or legal person who is under an investigation by the MFSA.
MFSA Act	Chapter 330 of the Laws of Malta. The Malta Financial Services Authority Act.

# 1. Introduction

The Malta Financial Services Authority ('MFSA' or 'Authority'), primarily through its Enforcement Function, 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. The Authority aims at resolving investigations in the shortest time possible to ensure efficiency and productivity. In order to achieve this aim, the MFSA has sought to strengthen its powers through the implementation of this policy document on settlement, as a means of resolving investigations (the 'Settlement Policy').

The Settlement Policy sets out a regime to be adopted by the MFSA in relation to settlement agreements, which regime will be further detailed in a separate internal procedure setting out a step-by-step process to be followed when entering into settlement discussions which may result in specific agreed terms of settlement.

## 2. Purpose and Applicability

The Settlement Policy is being issued to set out the MFSA's policy in relation to the settlement process to be adopted by the MFSA when entering into settlement discussions with persons under investigation.

The Settlement Policy shall apply to settlement discussions entered into up to the moment when the MFSA issues its final decision. This Settlement Policy will not apply to agreements entered into after the MFSA issues its final decision. The Authority may consider entering into settlement agreements after it issues its final decision, on a case-by-case basis, only if the terms of settlement do not trigger a change in the Authority's final decision.

Except for the specific cases in which the MFSA will not entertain a request for settlement (as further specified below), the MFSA is empowered to enter into settlement agreements in relation to any enforcement action which it is minded imposing as per the powers conferred to it by the MFSA Act and any other applicable law. This means that the power of the MFSA to enter into settlement agreements is not being contemplated solely for those cases where the MFSA is minded imposing an administrative financial penalty. Moreover, where the MFSA is minded imposing any other regulatory action, not being an administrative financial penalty, the MFSA has the power, during settlement discussions, to agree imposing a different regulatory action than that contemplated in the minded letter.

### 3. Policy Statement

The Settlement Policy establishes the following principles:

1. *Proactive Approach* - Unless the MFSA receives a proposal for settlement from an Investigated Person, the Authority may propose the initiation of settlement discussions itself by sending out, to the person being investigated, a settlement proposal letter together with the minded position following an investigation carried out by the Enforcement Function. The settlement proposal letter offers to the person under investigation the possibility to enter into settlement discussions. The settlement proposal letter shall include details as to the process to be followed if the person under investigation wishes to accept the proposal of the Authority to enter settlement discussions. In the interest of time, the settlement proposal letter shall be sent to the Investigated Person together with the minded position and the Investigated Person will have the possibility to reply to both letters accordingly.

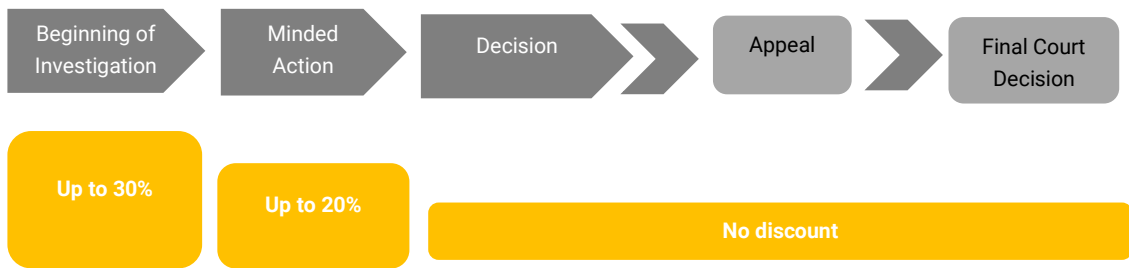
Nonetheless, the possibility to enter into settlement discussions can also be availed of from the moment that the Investigated Person becomes aware that the MFSA has commenced an investigation. In this case, the Investigated Person may approach the MFSA and request such discussions, as long as the potential breaches do not fall under one of the exceptions set out in this Settlement Policy.

2. *Exceptions* - The MFSA will not enter into settlement discussions in the following cases:
  - a) in cases where the alleged breaches relate to possible unauthorised activity, possible criminal offences and/or possible serious, repeated and systematic breaches of the anti-money laundering and funding of terrorism laws and regulations;
  - b) in cases where settlement discussions already started however, they were stalled and hence investigation continued. In such cases the Authority will not be in a position to entertain a further request for settlement as the settlement discussion needs to be taken seriously and considered as a one-time opportunity provided by the Authority to the Investigated Person to resolve the matter amicably;
  - c) in cases where the breaches identified are such that the case could have an adverse impact on the financial sector or on the reputation of Malta or are otherwise of such a nature that it would not be in the public interest to enter into a settlement with the Investigated Person;

- d) in cases where at least two years have not yet elapsed from the execution of a settlement agreement with the same Investigated Person; and
  - e) in cases where the MFSA finds that the Investigated Person was found to have again breached the same obligation, which was already subject to a settlement agreement, in a serious, repeated and systematic manner.
3. *Capping* - Apart from the above-mentioned instances where the MFSA will not enter into settlement discussions, the MFSA will not be proposing itself to initiate settlement discussions in cases where the minded action of the MFSA is in relation to an aggregate administrative financial penalty of up to EUR 5000. However, in such instances there is nothing precluding the MFSA from still entering into settlement discussions if the request for settlement is proposed by the person under investigation.
4. *Time Limit* - Settlement discussions need to be taken seriously by the person under investigation with the aim of resolving the investigation in the shortest time possible. To this effect, agreement to the proposed settlement terms need to be achieved within a time limit of one month from when the person under investigation and the MFSA initiate settlement discussions. If agreement is not reached within this time period, it will be deemed as if settlement discussions are not successful and hence the Authority will be empowered to continue with the investigation and issue its final enforcement action accordingly. The MFSA, in its sole discretion, may decide to extend this time limit of one month within which agreement to settlement terms need to be achieved, when progress in the settlement discussions is being made and there is goodwill on the part of the Investigated Person to conclude investigations by means of a settlement agreement.
5. *Indicative Discount Scheme* - To encourage early settlement, in the case where the MFSA is minded imposing an administrative financial penalty for alleged breaches committed, an indicative system of reduced financial penalties shall be applied (see diagram below). The discounts scheme detailed below reflects how early in the decision-making process the settlement agreement is signed. Such discount will be applied against the amount of administrative financial penalty which the Authority would otherwise have expected to impose on the person under investigation had the decision-making process been taken through to its conclusion.

The below diagram is indicative of the discounts to be applied given that the Authority might, during settlement discussions, consider affording a different discount depending on the circumstances of the case, such as the quantum of the original proposed penalty and the level of co-operation and goodwill shown by the Investigated Person.

## Discount Diagram



### Possible Settlement Reduction<sup>1</sup>

6. *Termination* - The MFSA is empowered to end any settlement discussions already started if it is evident that the Investigated Person does not have the willingness to conclude the matter amicably and is indeed wasting time and resources instead of embarking into proper discussions. Moreover, before terminating any settlement discussions because of lack of willingness to conclude the matter or because the time limit of one month is elapsing, the MFSA will be issuing a 7-day notice letter to the Investigated Person as a final notice/warning. Hence, the Investigated Person would be advised that settlement discussions will be considered as terminated within seven days from the date of the letter if no final response on settlement is received.
7. *Publication* - Following the execution of a settlement agreement, a public statement or notice shall be published on the MFSA website detailing, amongst others, the fact that a settlement agreement has been reached together with details of the findings of the Authority and the relevant legislative provisions breached. Moreover, the public statement/notice to be issued following the execution of a settlement agreement will also include the identity of the Investigated Person with whom a settlement agreement has been reached. However, the MFSA will retain discretion not to publish the identity of the Investigated Person where, following a case-by-case assessment, the MFSA believes that publication would jeopardise the stability of financial market or an ongoing investigation or where publication would cause, insofar as it can be determined, disproportionate damage to the person involved.

## 4. References

Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta)  
<https://legislation.mt/eli/cap/330/eng>

<sup>1</sup> A discount of up to 30 % will be applied if settlement is reached during investigation up to the issuing of the minded letter. If settlement is reached after the issuing of the minded letter but before the issuing of the MFSA's final decision, a discount up to 20% will be applied. No discount will be granted if settlement is reached after the MFSA issues its final decision.