

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### **Frequently Asked Questions on ARM Asset Backed Securities S.A. and Catalyst Investment Group Limited**

The following Questions and Answers have been prepared by the Malta Financial Services Authority (“MFSA” or “the Authority”) to further assist investors in Malta in ARM Asset Backed Securities S.A. (“ARM”) when compiling the application form for compensation sent by the Financial Services Compensation Scheme in the UK. The UK’s FSCS have issued other FAQs – click on this link:

<http://www.fscs.org.uk/what-we-cover/questions-and-answers/qas-about-arm-and-catalys-j847tta1d/>

*In this FAQ, references to “claim form” or “application form” refer to the form sent by the UK’s FSCS to all ARM investors.*

#### **1. What is the UK’s Financial Services Compensation Scheme [‘FSCS’]?**

The FSCS is the UK’s compensation fund of last resort for customers of authorised financial services firms. The FSCS pays compensation if a firm is unable or likely to be unable, to pay certain claims against it. This occurs when the firm has stopped trading and has been declared in default. The FSCS does not charge customers for its services.

#### **2. What is Catalyst and what has happened to it?**

Catalyst was the primary distributor of ARM’s bonds in the UK, marketing them to investment firms and Independent Financial Advisers (IFAs) which in turn promoted and sold them to retail investors. In Malta, securities issued by ARM were sold through a number of such firms. At the time, a company in the UK called Catalyst Investment Group Limited [Catalyst], licensed by the UK’s financial regulator, had actively promoted investment in securities issued by ARM via a network of firms and IFAs located in the UK as well as Malta.

Catalyst was also responsible for producing the brochures which were used to promote the bonds to IFAs and consumers. The UK's financial regulator had carried out an investigation into Catalyst and in October 2013 it declared Catalyst to be in default and so, unable to satisfy claims made against it. According to UK law, in such situations, investors who might have been misled by firms authorised in the UK, can be eligible to receive compensation from the UK's FSCS.

Following an analysis of the product documentation on ARM - for which Catalyst was responsible – the FSCS has now determined that it may be liable for some of the losses sustained by some of the investors in ARM. Over these past few months, the MFSA has been actively collaborating with the UK's financial services regulator and has been in continuous discussion with FSCS in order to determine whether Maltese investors in ARM securities can submit claims to FSCS.

### **3. What types of claim against Catalyst can be referred to the FSCS?**

FSCS is able to deal with claims in relation to Catalyst's role in distributing and promoting ARM bonds to licensed entities and consumers.

Following an analysis of Catalyst's role as distributor of the ARM bonds and the financial promotions for which Catalyst was responsible, the FSCS reached the view that Catalyst may be liable for losses in many cases. The FSCS started inviting claims against Catalyst in April 2014.

### **4. How do I make a claim against Catalyst with FSCS?**

Since Catalyst was declared in default in October 2013, the FSCS has sought to gather details of ARM investors from various third parties, including ARM's Provisional Liquidators.

With the benefit of this information, FSCS contacted all known ARM investors in March 2014 and requested them to complete and return an FSCS application form.

The application form asks the claimants to set out key information to support their claim, such as details of the ARM bonds investment, the firms which the investor dealt with in connection with that investment and why they decided to invest. The claimants will also be asked to send further evidence to support their claim, including original versions of documentation relating to the ARM investment (such as receipts, contract notes, investment

certificates, investment valuation statements) as well as a bank statement indicating the sum invested in the ARM investment(s).

The FSCS claim form describes in detail what documentation investors should attach with their claim form. This evidence is required by the FSCS in order to verify the individual's claim against other evidence held by FSCS.

ARM investors who have not received an FSCS application form by the end of April 2014 should contact FSCS's Initial Contact Team on 0044 20 7741 4100 or [enquiries@fscs.org.uk](mailto:enquiries@fscs.org.uk).

**5. What evidence would I need to provide to the FSCS if the investment was not made through a bank transfer?**

Where the payment has not been effected through a bank transfer and, therefore, the sum invested is not evidenced by a bank statement, investors can provide other relevant records detailing the source of the original investment amount. For example, where the investment had been paid in cash, the claimant should provide the receipt issued by the firm. If payment was done by cheque, the claimant should obtain a copy of that cheque [cheque image] from the bank (the bank statement would not indicate the payee's name).

**6. How will FSCS determine whether I am eligible for compensation?**

Once FSCS has received a completed FSCS application form, it will proceed to assess the claim to determine whether it is eligible for compensation under FSCS's rules.

These assessments will be carried out on FSCS's behalf by Deloitte LLP, which has been appointed by FSCS to assist in processing claims made against Catalyst. Accordingly, claimants may subsequently receive correspondence from Deloitte LLP regarding their claim. All claims will be considered on a case-by-case basis, based on the information presented in the FSCS application form along with any accompanying evidence.

**7. Will FSCS treat claims relating to "pending investors" differently from other types of claim?**

ARM's bonds were marketed in several tranches. There were bonds in tranches 1-8, sold between 2006 and 2009. There is also a group of pending investors for tranches 9-11, purchased from 2009. While these pending investors transferred funds to ARM or their investment firm, it is not clear whether the bonds in tranches 9-11 have been issued. FSCS's claims process for pending investors will be the same for other categories of claimants, but

the assessment of Catalyst's legal liability regarding the nature of such claims will be different.

There is currently an ongoing legal debate as to whether bonds comprising tranches 9-11 were issued by ARM. The Provisional Liquidators are currently seeking independent legal advice on this matter.

**8. What is the level of protection provided by FSCS?**

Compensation payable by FSCS to eligible claimants' for claims against Catalyst relating to investment business regulated by the FCA is up to a maximum of £50,000 per person.

**9. If I receive compensation, will my legal rights be transferred to the FSCS?**

Yes. Under FSCS's rules and the terms set out in the application form, when FSCS pays compensation, claimants in effect transfer or "assign" all of their legal rights to their claim against the firm in default and/or any relevant third parties to the FSCS. In other words, the FSCS then "stands in the shoes" of the claimant. Once claimants transfer their rights to FSCS, they can no longer claim directly against Catalyst and/or any relevant third parties. Additionally, the FSCS controls the claimants claim in, for example, the provisional liquidation of ARM.

**10. I have invested in more than one bond/tranche through Catalyst; should they all form part of my claim?**

Yes. Claimants should include all investments in their claim to the FSCS, and claimants should not submit "partial" claims (i.e. whereby the claimant makes a claim for some tranches but not for others).

According to the FSCS's terms and conditions (see the application form) all the investor's rights in investments through Catalyst will be transferred to the FSCS as soon as compensation is made, listed in their entirety on the application form. The FSCS is duty bound to make recoveries using such transferred rights (where FSCS considers it reasonably possible and cost effective to do so). Therefore, the FSCS needs to be informed of all investments properly in order to pursue the relative recoveries. Investors that do not wish to transfer their rights in any investment to FSCS, should discuss the issues with the FSCS before submitting a claim for compensation.

**11. If my claim against Catalyst is accepted by FSCS, can I still pursue a complaint against my investment firm?**

Under FSCS's rules and the terms set out in the application form, when the FSCS pays compensation, claimants transfer or "assign" all their legal rights to claim against the firm in default and/or any relevant third parties. This means that, if FSCS pays compensation on a Catalyst/ARM claim, the claimant's rights to claim against the investment firm that recommended the ARM investment will be transferred to FSCS. Accordingly, if a claimant accepts any compensation from the FSCS, he/she will no longer be entitled to claim against that investment firm for the same losses. Furthermore, the claimant would no longer be entitled to claim in the insolvency of ARM for the same losses.

Therefore, once FSCS has paid compensation to a particular claimant it will take over all of that claimant's rights, and she/he would not then be able to pursue a further claim against the firm which sold the investment. The assignment of rights takes effect when a claimant accepts the compensation paid in relation to a claim.

**12. I had filed a complaint with the MFSA's Consumer Complaints Manager. Do I need to withdraw or inform the FSCS of my complaint?**

In Section F question 3 of the application form claimants are asked to provide details of complaints in relation to claimants' investments in ARM with the UK's Financial Ombudsman Service. Investors who have lodged a complaint with the MFSA's Consumer Complaints Manager should make reference to their complaint in the application form. The claimant should also provide copies of relevant correspondence with the MFSA's Consumer Complaints Manager.

The FSCS have confirmed that investors do not have to withdraw any complaint they have in relation to their ARM investment. However, they should provide details in their FSCS application form of any claim they are pursuing.

**13. Can I seek assistance when filling the FSCS claim form?**

The claim form should be filled in by the investor and all documentation provided must be in original. However, if investors require assistance when filling the form, they are urged to seek independent professional advice.

Claimants who have been assisted in completing the claim form, should ensure that the information included is accurate prior, to signing the claim form. It is the claimants' responsibility to ensure that the details and information completed in the claim form is correct – even if they asked someone else to fill in the details on their behalf.

**14. I do not have original copies of documentation. Will photocopies be enough?**

Claimants should ensure that they send original documents to the FSCS, where originals are specified. If they are unable to provide original documentation as requested, they should explain why this is the case when returning the claim form. Certified true copies can be attached to the claim form. The investment firm which sold the investment should be in a position to provide certified true copies. Should claimants not be in a position to contact their intermediary or are finding it difficult to obtain such documents from the firm, they should contact the MFSA's Securities and Markets Supervision Unit on 2548 5112 or 25485480.

**15. What information should I include if I invested in more than one tranche?**

There might be the case where an investor held an investment in more than one tranche. However the investor redeemed one or some of those investments and received the settlement thereof.

When compiling the claim form, investors should include details of ALL investments in Section D1, including those which had been sold prior to ARM being declared in default. Further details could also be provided in Section E6 or E7 of the claim form.

**16. What information should I include in the claim form if the investment has been transferred to another person?**

The application form needs to be completed by the original investor. However, where the original investor has transferred the investment to another person and ARM/ Catalyst provided the acquiring investor with a new contract note, the original investor should provide full details about the transfer of the investment to the acquiring party, including relevant documentation. The claim form should therefore include details of both the original and acquiring investors.

**17. I have been asked to provide bank details in Section K of the application form.**

**Should I provide my personal account details?**

The FSCS normally pays compensation directly to the claimant. In this regard, claimants would be required to include personal bank account details in Section K of the application form. The IBAN and BIC are located on bank statements or obtained directly from the bank. It is likely that compensation will be paid in the currency of the investment. If the currency of the bank account is not the same as the currency of the investment, additional charges including currency conversion charges may apply.

Although payment by bank transfer is more convenient, there may be instances where the FSCS may pay by cheque (such as if the investor/claimant does not have a bank account). Claimants are to indicate clearly in Section K that they prefer payment to be made by cheque, and why. Charges apply when presenting the cheque at your bank.

Investors who receive compensation should not rush into re-investing or spending the proceeds. Indeed, investors should take their time and consider any available options in their best interest.

**18. The claim form is requesting some information with which I am not familiar.**

**Can you help?**

In Section A under the Claimant Details, investors are required to give the National Insurance Number. The FSCS have confirmed to the MFSA that Maltese investors can provide the identity card number.

In case where investors were provided with a promotion and selling service, investors should provide the firm's details in Question E1 of the application form with further explanation of the firm's role included in Question E2. In Section K, unless claimants are providing details of a bank account in the UK, they do not need to provide "Account Sort Code" and "Roll No." details.

**19. Are there time limits to submit my application?**

FSCS rules set no time limit for making a claim for compensation to the FSCS, although a claim may be subject to legal time limits. If ARM bondholders wish to separately pursue claims against other persons they should be aware that other limitation time periods may apply to different types of claims. If in doubt, seek legal advice.