



SETTLEMENT FRAMEWORK

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Interpretation

"*Board*" means the Board of the Commission;

"*Commission*" means the Financial Services Commission established under section 3 of the FSA;

"*Decision Notice*" means the written notification issued by the Enforcement Committee under section 53 (3) of the FSA;

"*Enforcement Committee*" means the Enforcement Committee established under section 52 of the FSA;

"*FSA*" means the Financial Services Act;

"*licensee*" –

- (a) means the holder of a licence; and
- (b) includes –
 - (i) any person authorised, registered or approved under the relevant Acts;
 - (ii) any institution established to provide any service under the relevant Acts;
 - (iii) any person who is a present or past licensee or any person who is a present or past officer, partner, shareholder, or controller of a licensee;

"*relevant Acts*" is defined in section 2 of the FSA.

1. Introduction

- 1.1. This Settlement Framework (“Framework”) sets out the approach of the Commission to the resolution of enforcement cases, through Settlement.
- 1.2. This Framework forms part of the Commission’s [Enforcement Manual](#) and may be subject to amendments.

2. Definition and Settlement Approach

- 2.1. Settlement provides an avenue to resolve certain cases in which enforcement actions are contemplated by way of mutual agreement between the Commission and a licensee that the latter has committed breach(es) which are supported by facts. An early acknowledgement by a licensee of breaches of any provision of the relevant laws will be considered favourably by the Commission . Settlement will enable key messages to be delivered to the industry and investors in a timely manner, and will equally save time and the investigative resources of the Commission.
- 2.2. The determination as to whether a case is suitable to be resolved through Settlement will be made on a case-by-case basis by the Commission so as to ensure that enforcement outcomes are consistent, proportionate, effective and in the public interest.

3. The Settlement Committee

- 3.1. For the purpose of engaging in Settlement discussions, a Settlement Committee (“SC”) has been set up by the Commission.

4. The Settlement Process

- 4.1. A licensee which is facing the prospect of enforcement action(s), may make a request in writing to the Chief Executive, indicating that the licensee wishes to avail itself of an opportunity to resolve matters through Settlement.
- 4.2. The responsibility for requesting/initiating Settlement discussions rests with the licensee.
- 4.3. However, the decision to engage in Settlement discussions with any licensee is at the sole discretion of the Chief Executive.
- 4.4. Where the Chief Executive has determined that Settlement discussions may take place, this will be communicated to the licensee and arrangements will be made by the Commission for discussions to commence.
- 4.5. There may be circumstances in which the Chief Executive deems that Settlement is not appropriate and that it is necessary to pursue enforcement action(s) by the Commission or that the matter be referred to the Enforcement Committee, as the case may be.
- 4.6. Any member of the board or senior management of a licensee may attend Settlement discussions. Any person, who is a member of senior management but who is not a member of the board, should obtain prior authorisation in writing by the board to attend Settlement discussions. A licensee may also be accompanied by a law practitioner.

- 4.7. Settlement discussions are possible at any stage of the enforcement process¹ up to the issue of a Decision Notice issued by the Enforcement Committee, as long as the Commission considers that it has sufficient understanding of the nature and gravity of the breach to make a reasonable assessment and can reach an appropriate outcome.
- 4.8. Settlement discussions may, therefore, take place in parallel with any investigation, inquiry or referral to the Enforcement Committee², which has already started. Any ongoing investigation inquiry or referral to the Enforcement Committee will continue unless the matter is resolved through Settlement. In this regard, the Commission expects that licensees will continue to cooperate and comply with any request for information raised in connection with an investigation or inquiry. Any response to requests for information concerning an ongoing investigation or inquiry is therefore to be provided in open correspondence.
- 4.9. Settlement discussions may be halted by the Commission if new information indicates that the matter at hand is more serious or otherwise no longer suitable for Settlement discussions.
- 4.10. All Settlement outcomes will be approved by the Board of the Commission.
- 4.11. If an agreed outcome cannot be reached, the case will proceed in accordance with the enforcement process.

1 The enforcement process encompasses the information gathering and review, investigation, inquiry and show cause stages for the purposes of enforcement action.

2 Up to the issue of a Decision Notice.

5. Criteria to be considered

5.1. In determining whether to grant a request for Settlement discussions and/or in considering the substance of any proposals for Settlement by a licensee, the Chief Executive and the SC respectively will take into account, in addition to the factors set out in the Enforcement Manual when considering the imposition of administrative sanction(s), the following factors:

- a) the nature, seriousness and impact of the conduct or suspected contravention that is the subject of the proposed Settlement;
- b) whether the contravention is ongoing;
- c) the role played by the licensee in the conduct and/or suspected contravention that is the subject of the proposed Settlement;
- d) whether Settlement will achieve an effective outcome for those (such as consumers or investors) who have been adversely affected by the conduct and/or suspected contravention by the subject of the proposed Settlement;
- e) whether the licensee will comply with the terms of the Settlement Agreement;
- f) the disciplinary record and compliance history of the licensee;
- g) the prospects of a swift and appropriate resolution of the matter; and
- h) whether the proposed terms of Settlement delivers credible deterrence.

5.2 The above factors are not exhaustive as there may be other relevant factors which the Chief Executive and the SC may take into account. Furthermore, not all factors will be relevant to a particular case.

6. The Settlement Agreement

6.1. Where Settlement is reached and has been approved by the Board of the Commission, the terms of the Settlement will be formalised in a signed Settlement Agreement (“Agreement”).

6.2. The Agreement will set out :

- a) the relevant facts pertaining to the case;
- b) the wrongdoing and/ or non-compliance admitted by the licensee;
- c) the acceptance of responsibility for the wrongdoing and/or non-compliance;
- d) the nature, quantum and/or duration of any agreed sanction and/or any remedial steps which the licensee has agreed to take (as the case may be);
- e) that the licensee has read and understood the Agreement and by signing the Agreement, the licensee agrees to be bound by the terms of the Agreement;
- f) that the licensee has signed the Agreement voluntarily and without duress or coercion;
- g) that the licensee waives his right to appeal and contest any term of the Agreement; and
- h) that the licensee certifies as to the completeness and accuracy of information that the licensee has provided to the Commission in connection with the matter. Further, that the licensee acknowledges that the Commission has relied upon, among other things, the completeness of the information provided by the licensee.

- 6.3. The outcome reached following Settlement discussions will form part of the regulatory history of the licensee and may be taken into account in any subsequent regulatory decisions³ that are made concerning the licensee.
- 6.4. A decision reached following Settlement discussions will not be regarded as a binding precedent for other matters that are being considered for Settlement. However such outcomes may be treated as persuasive.

7. Termination

- 7.1. The Agreement may be terminated if, at any time:
- 7.1.1. the licensee has misled the Commission;
 - 7.1.2. the Commission becomes aware of any material information to which it was not privy at the time it agreed to the Settlement. In such instance, the Commission may reconsider the case and/or take further enforcement action, as it deems fit;
 - 7.1.3. the licensee fails to comply with the terms of the Agreement, in which case, it may be subject to further action by the Commission as deemed appropriate; and
 - 7.1.4. any other matters that come to that attention of the Commission which may affect the terms of the Agreement.

³ Regulatory decisions in this regard include but are not limited to authorisation, supervisory and enforcement decisions

8. Mitigating factors

- 8.1 Acceptance by a licensee of a wrongdoing and/or non-compliance is a mitigating factor which will be taken into account by the SC in determining the nature of any administrative sanction that may be deemed appropriate.
- 8.2 If Settlement is reached early and on terms that are amenable to the Commission, this may result in a reduction in the amount of administrative penalty or, where appropriate, in a possible reduction of a period of restriction or any other direction that would otherwise be imposed on a licensee.

9. Penalty Reduction Scheme

- 9.1. The Commission may apply a reduction to an administrative penalty on a sliding scale depending on the timing as to when Settlement has been reached:

Stage	Discount
Stage 1 - Early Settlement stage, at any stage before the matter is referred to the Enforcement Committee	30%
Stage 2 – Settlement between referral to the Enforcement Committee and the issue of a Warning Notice	10%
Stage 3 - Settlement between the issue of a Warning Notice and the issue of a Decision notice	5%

10. Without prejudice

10.1. Settlement discussions will be conducted on a ‘without prejudice’ basis. ‘Without prejudice’ correspondence and any material issued for the purposes of Settlement discussions will not be used or referred to at any stage in the Enforcement Committee process.

10.2. However, the mere inclusion of ‘without prejudice’ in a document is not in itself determinative as to whether the requisite protection applies. In the Settlement scenario, the Commission will presume that the document forms part of the Settlement process. Any letter in response to ‘*without prejudice*’ communication or which is part of a continuing sequence of negotiations will also be deemed to be protected. The Commission will not rely on it in subsequent proceedings before the Enforcement Committee, without the consent of both parties or unless the presumption of protection is successfully rebutted.

11. Time limit

11.1. The Commission will impose a time limit for the completion of Settlement discussions. This time limit will run from the day on which the matter has been deemed suitable for Settlement. This time limit is to ensure that discussions proceed in a timely manner and that the length of the discussions do not have a prejudicial effect on any ongoing investigation or inquiry, thereby avoiding prejudice to the Commission’s statutory objectives.

11.2. The time limit for the completion of Settlement discussions will not exceed 60 calendar days. Once initiated by the licensee, the Commission will on a best endeavours basis, expedite discussions.

12. Publication

12.1 The publication of Enforcement outcomes plays an important part in credibly deterring non-compliant behaviour. Outcomes reached through Settlement are no different in this regard, and therefore the Commission will publish outcomes achieved through the Settlement process in the form and manner as the Commission may deem appropriate.