



ARBITER FOR FINANCIAL SERVICES

Consultation Document

LEVIES AND FEES

Date of publication of this consultation: 8 February 2017

Closing Date: 10 March 2017

Note: The proposals contained in this consultation document are not binding and still subject to changes and revisions following representations received from financial services providers and other stakeholders.

SUBJECT AND PURPOSE OF THIS CONSULTATION

The Office of the Arbiter for Financial Services (“OAFS”) is an autonomous and independent body setup in terms of Act XVI of 2016 of the Laws of Malta (“the Act”). It has the power to mediate, investigate and adjudicate complaints filed by customers against financial services providers.

In terms of article 8(1)(e) of the said Act, the Board of Management and Administration is empowered to advise the Minister for Finance on the making of rules regarding the payment of levies and charges to be paid by different categories of persons to the Office, the amounts of those levies and charges, the periods within which specified levies or charges are to be paid, and penalties that are payable by persons who fail to pay on time or pay in full the amount due.

The purpose of this document is to consult with interested parties in regard to a framework of levies and fees (as applicable) payable by financial services providers to the OAFS in 2017 to sustain the Offices’ ongoing expenditure.

The Board has worked on the assumption that its operations will be fully funded by the financial services sector from such levies as of 2017.

CONSULTATION AND HOW TO RESPOND

Feedback on the proposed framework should reach the OAFS by not later than **10 March 2017**. Please submit your responses by e-mail to consultation.oafs@financialarbiter.org.mt addressed to: *The Chairman, Board of Management and Administration*.

Any queries or requests for clarification in respect of the draft proposal should also be addressed in this manner.

A summary of responses to the consultation, together with a list of the parties which have submitted a response, will be published following closure of the consultation period. Persons or entities who do not wish to have their name disclosed should specifically state so in their response.

PROPOSED STRUCTURE OF LEVIES AND FEES

1. Words and expressions which are used in this document shall have the same meaning as assigned in the respective acts (or related subsidiary legislation, where applicable) to which they refer (unless otherwise stated). The term “financial year” is as defined in the Act (i.e. 31 December).
2. For the purposes of this document:
 - a) a “levy” is an amount payable annually by a financial services provider to the OAFS depending on the type of authorisation it holds. The levy that is chargeable to a provider is outlined in Annex 1.
 - b) a “fee” refers to a case fee that is charged in very specific circumstances as outlined below.

Fees and levies shall be paid in euro and are non-refundable.

3. In terms of the Act, a “financial services provider” means *“a provider of financial services which is or has been licensed or otherwise authorized by the Malta Financial Services Authority in terms of the Malta Financial Services Authority Act or any other financial services law, including but not restricted to investment services, banking, financial institutions, credit cards, pensions and insurance, which is or has been resident in Malta or is or has been resident in another EU / EEA Member State and which offers or has offered its financial services in Malta. A provider of financial services which has had its licence suspended or withdrawn by the competent authority, but which was licensed during the period in relation to which a complaint by an eligible customer is made to the Arbiter, shall be considered as falling within the definition of a financial services provider”*.
4. In this regard:
 - a) except for providers which exclusively service firms that do not fall under the definition of a micro-enterprise in the Act, all providers which hold a licence or other authorisation as detailed below by the MFSA are required to contribute a levy to the OAFS;
 - b) unless stated otherwise, a provider which holds multiple licences is required to pay a levy for each type of licence category it holds;
 - c) providers which are licensed by any regulator in the EU/EEA and passport their activities in Malta (and therefore not required to be licensed or authorised by the MFSA to enable them to provide financial services in Malta) are excluded from the scope of this document.
5. Ordinarily, all levies shall fall due on 1 July (of each calendar year) but may be paid on any day during that month. A request for payment will be issued in advance of this date and providers will be requested to compile a self-assessment form and effect payment to the Office accordingly.

6. Any financial services provider which is licensed at any time during a financial year (including those which may become licensable as a result of new legislation which enters into force during the year) shall be required to pay a *pro rata* levy of €350 which shall be calculated by taking into account the number of days that elapse from the day when the financial provider obtains a licence, as the case may be, up to the end of that calendar year.
7. Any person who/which has had its licence suspended or withdrawn by the competent authority, but was licensed during the period in relation to which a complaint by an eligible customer is made to the Arbiter, shall pay a fee of €50 for each complaint submitted against it. The OAFS will issue a request for payment for such case fees at any time during the course of the complaint review.
8. Any financial services provider which ceases to be authorised by the MFSA partway through a financial year of the OAFS will remain liable for any unpaid levies. For the avoidance of doubt, such payments shall not be pro-rated.
9. It is envisaged that the final and approved framework of levies and fees will become applicable as of 2017.
10. If there is any delay in the publication of the legal notice giving effect to the final framework of levies and fees, annual payment would still be due to the OAFS for 2017 in accordance with provisions as laid out in the legal notice.
11. If a financial services provider does not pay the amount due (levies and case fees) before the end of the date on which it is due, it shall pay an additional amount to the OAFS as follows:
 - a) if the levy or fee was not paid in full before the end of the due date, an administrative fee of five hundred euro (€500); and
 - b) interest on any unpaid part of the contribution at the rate of 8% per annum, accruing on a daily basis from the date on which the amount concerned became due.
12. In terms of article 8(2), the Board may bring proceedings before the Civil Court to recover as a debt any amount of levy or fee due to the OAFS.

ANNEX 1 - SUGGESTED LEVIES AND FEES

1. Credit Institutions

Each credit institution licensed and authorised under the Banking Act (Cap. 371) shall pay, in respect of its liability for each financial year, a levy calculated at the rate of 0.0018% of its total deposit liabilities as reported at the end of the year immediately before the year in which the levy is payable. A minimum levy of €2,500 and a maximum of €125,000 is payable by each credit institution.

2. Financial Institutions

Each financial institution licensed and authorised under the Financial Institutions Act (Cap. 376) shall pay a levy of €350 in respect of its liability for each financial year.

Each agent of local financial institution licensed and authorised under the Financial Institutions Act (Cap. 376) shall pay a levy of €50 in respect of its liability for each financial year.

3. Insurance undertakings

Each insurance undertaking licensed and authorised under the Insurance Business Act (Cap. 403) to carry on general business whose head office is in Malta including protected cell companies but excluding captive insurance undertakings, captive reinsurance undertaking and reinsurance special purpose vehicles but shall pay, in respect of its liability for each financial year, a levy calculated by applying the rate of 0.08% by reference to the gross premiums receivable as reported at the end of the year immediately before the year in which the levy is payable. A minimum levy of €500 and a maximum of €25,000 is payable by such insurance undertaking.

Each insurance undertaking licensed and authorised under the Insurance Business Act (Cap. 403) to carry on long term business of insurance whose head office is in Malta shall pay, in respect of its liability for each financial year, a levy calculated by applying the rate of 0.08% by reference to the gross premiums receivable as reported at the end of the year immediately before the year in which the levy is payable. A minimum levy of €500 and a maximum of €25,000 is payable by such insurance undertaking.

Each insurance undertaking licensed and authorised to provide both general and long term business of insurance shall pay, in respect of its liability for each financial year, a levy calculated by applying the rate of 0.08% by reference to the gross premiums receivable for both types of business as reported at the end of the year immediately before the year in which the levy is payable. A minimum levy of €500 and a maximum of €25,000 is payable by such insurance undertaking.

4. Insurance intermediaries

Each insurance intermediary enrolled in the Agents List, Managers List or Brokers List (except for Tied Insurance Intermediaries) licensed and authorised under the Insurance Intermediaries Act (Cap. 487) shall pay a levy of €350 in respect of its liability for each financial year.

Each insurance intermediary registered in the Agents Register, Managers Register or Brokers Register (except for Tied Insurance Intermediaries) licensed and authorised under the Insurance Intermediaries Act (Cap. 487) shall pay a levy of €50 in respect of its liability for each financial year.

Each Tied Insurance Intermediary (individual or company) licensed and authorised under the Insurance Intermediaries Act (Cap. 487) shall pay a levy of €50 in respect of its liability for each financial year.

5. Securities

Each investment firm licensed and authorised under the Investment Services Act (Cap. 370) with a Category 1a, 1b, 2 or 3 licence shall pay, in respect of its liability for each financial year, a levy by applying the rate of 0.1% by reference to its gross revenue as reported at the end of the year immediately before the year in which the levy is payable. In terms of the minimum amounts payable, a Cat 1a and Cat 1 b investment firm would be required to pay a levy of €350, a Cat 2 would pay €2000 and a Cat. 3 would pay €2500.

Category 4 investment firms shall not be required to pay a levy.

Each Ties Agent (individual or company) licensed and authorised under the Investment Services Act (Cap. 370) shall pay a levy of €50 in respect of its liability for each financial year.

Each Recognised Fund Administrator licensed and authorised under the Investment Services Act (Cap. 370) shall pay a levy of €350 in respect of its liability for each financial year.

An investment firm which has more than one authorisation under the Investment Services Act (Cap. 370) shall pay, in respect of its liability for each financial year, a levy by applying the rate of 0.1% by reference to its gross revenue (comprising its licensable activities) as reported at the end of the year immediately before the year in which the levy is payable. A minimum levy of €2000 is payable by such investment firm.

Each Collective Investment Scheme (irrespective of its legal form and target investor base) licensed and authorised under the Investment Services Act (Cap. 370) shall pay a levy of €100 for the Scheme and an additional €75 for each sub-fund in respect of its liability for each financial year.

6. Pensions (excluding Retirement Schemes and Retirement Funds)

Each Retirement Scheme Administrator licensed and authorised under the Retirement Pensions Act (Cap. 514) – excluding those which already hold a licence under the Investment Services Act or authorised to carry on long term business under the Insurance Business Act or already licensed to provide trustee services under the Trusts and Trustees Act – shall pay a levy of €350 in respect of its liability for each financial year.

Each Retirement Scheme and Retirement Fund licensed and authorised under the Retirement Pensions Act (Cap. 514) shall pay a levy of €100 for the Scheme and an additional €75 for each sub-fund in respect of its liability for each financial year.

7. Trustees

Each trustee licensed in terms of article 43[3] of the Trusts and Trustees Act (Cap. 331), or person authorised to provide fiduciary services under article 43(12) of the same Act] shall pay a levy of €350 in respect of its liability for each financial year.

Each trustee licensed in terms of article 43(8) of the same Act shall pay €50 in respect of its liability for each financial year.

Each trustee registered in terms of the Trust Act, 1988 shall pay €350 in respect of its liability for each financial year.

8. All other regulated entities

Where the OAFS is required to investigate a complaint against any other regulated financial services provider during the year, that provider will be required to pay a case fee of €50.