



**Strategic Plan &
Income and Expenditure
Statement
2017**

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(The use of the masculine pronoun in this text denotes both genders, as applicable.)

Introduction

The legislation which established the Arbiter for Financial Services is Act XVI of 2016¹ and came into force on 18 April 2016.

The Office of the Arbiter for Financial Services (“OAFS”) is a body set up by law with power to mediate, investigate and adjudicate complaints filed by customers against all financial services providers.

The OAFS consists of the Arbiter for Financial Services and the substitute Arbiter, if any, the Board of Management and Administration and of such officers and staff members appointed or employed with the Office.

The Arbiter is totally independent and impartial of all parties concerned to the complaint. The day-to-day management of the OAFS is the responsibility of a Board (referred to as the Board of Management and Administration) headed by a chairperson. The Board is not in any way involved in the decision of complaints.

The Board of Management and Administration at the OAFS was appointed by the Minister for Finance with effect from 29 April 2016.

Its functions in terms of law include:-

- a) to provide support in administrative matters to the Arbiter in the exercise of his functions when the Arbiter so requests and to assist the Arbiter on any matter on which the Arbiter seeks advice;
- b) to advise the Minister 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 a person who fails to pay on time or pay in full the amount due;
- c) to collect and recover the levies and charges due;
- d) to determine accounting policies which are to be followed by the Office when keeping accounting records;
- e) to determine the form of the report with estimates of income and expenditure to be drawn by the Board on an annual basis;
- f) to determine the form of the report relating to the strategic plan to be drawn by the Board on an annual basis; and
- g) to perform such functions or activities as are assigned to it by this Act.

The law obliges the Board to prepare and approve a Strategic Plan for the year in consultation with the Arbiter for Financial Services.

¹ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=27478&l=1>

The report is required to specify the objectives of the activities of the OAFS for the financial year concerned; the nature and scope of the activities to be undertaken; the targets and criteria for assessing the performance of the OAFS; and the uses for which it is proposed to apply the OAFS's resources.

A copy of the strategic plan, as approved by the Board, is required to be sent to the Minister for Finance who shall lay it on the Table of the House of Representatives and also be made available to the public.

Overview

The Arbiter for Financial Services was formally appointed on 19 May 2016.

The Board and the Arbiter convened for the first time shortly after the Arbiter's appointment, in the presence of the Minister for Finance. Since then, the Board has met once every month, except in the month of August.

The OAFS formally commenced operations on 23 May 2016, and started accepting complaints during the last week of June 2016.

While this is a relatively short period it is nevertheless opportune for the OAFS to set out now how it intends to operate in the coming years. While much has been achieved in the relatively short period of six months, the Arbiter and the Board are conscious that it takes time to get a new organisation operating to its full potential.

The OAFS provides the means to an independent and impartial mechanism of resolving disputes outside of the courts system.

The Arbiter for Financial Services, who is appointed by the Minister for Finance for a seven year tenure, acts independently and impartially of all parties concerned and shall not be subject to the direction or control of any other person or authority. The law gives him the authority to determine and adjudge a complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case. The Arbiter is required to deal with complaints in a procedurally fair, informal, economical and expeditious manner.

In the review of complaints, the Arbiter will consider and have due regard, in such manner and to such an extent as he deems appropriate, to applicable and relevant laws, rules and regulations, in particular those governing the conduct of a service provider, including guidelines issued by national and European Union supervisory authorities, good industry practice and reasonable and legitimate expectations of customers and this with reference to the time when it is alleged that the facts giving rise to the complaints occurred. The Arbiter's powers under the Act are wide and includes the power to summon witnesses, to administer oaths and to issue such interlocutory orders.

The Arbiter shall have the competence to hear complaints in terms of his functions in relation to the conduct of a financial service provider which occurred on or after the first of May 2004.

The Arbiter would be unable to exercise his powers if the conduct complained of is or has been the subject of a law suit before a court or tribunal initiated by the same complainant on the same subject matter. Neither is he unable to accept a complaint if it results that the customer failed to communicate the substance of the complaint to

the financial service provider concerned and has not given that financial service provider a reasonable opportunity to deal with the complaint prior to filing a complaint with the Arbiter. A complaint may also be refused if, in the Arbiter's opinion, it is frivolous or vexatious.

The Arbiter may, if he thinks fit, treat individual complaints made with the Office together, provided that such complaints are intrinsically similar in nature.

The Arbiter is empowered to mediate, adjudicate, and resolve disputes and, where appropriate, make awards up to €250,000, together with any additional sum for interest due and other costs, to each claimant for claims arising from the same conduct. The Arbiter may, if he considers that fair compensation requires payment for a larger compensation than such award, recommend that the financial service provider pay the complainant the balance, but such recommendation shall not be binding on the service provider. His decisions are binding on both parties subject only to appeal to the Court of Appeal (Inferior Jurisdiction).

Natural persons and micro-enterprises may lodge a complaint with the OAFS. A micro-enterprise means an enterprise which employs fewer than ten persons and whose annual turnover and, or annual balance sheet total does not exceed €2,000,000.

Complaints may be lodged against all financial services providers, which are or have been licensed or otherwise authorised by the Malta Financial Services Authority 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.

The charge for lodging a complaint with the OAFS is €25 which is reimbursable in full if the complainant decides to withdraw his complaint or the parties to the complaint agree on a settlement of the dispute.

Key achievements (June to December 2016)

- Within a relatively short period of time since being given their respective appointments, the Arbiter for Financial Services and the Chairman of the Board have worked in close cooperation to setup the fundamental structures of the Office.
- In June, the OAFS issued a call for vacancies for administrative as well as specialist staff in the field of financial services. Following an interview process, key administrative staff were recruited. Regrettably none of the applicants for case analysts and case officers/mediators met the criteria and qualities the OAFS was looking for.
- A website in English and Maltese was setup enabling customers and financial services providers to understand the setup of the OAFS, and the processes that the OAFS would employ when dealing with a complaint. A complaint form in Maltese and English is also available for customers who would want to lodge a complaint with the OAFS. The complaint form is not mandatory as long as the complaint conforms to the requisites established by law.
- Meetings with associations representing stakeholders were held to explain the process and establish good working relations.
- Sound administrative practices have been established from the outset. For instance, all complaints are given a unique reference number and all complaint documentation is scanned. All payments (whatever the value) are signed by the Chairman of the Board and another official of the OAFS (either the secretary to the Board or any one of the Board members).
- As public awareness of the role of the OAFS is important, the OAFS has participated during a number of TV and radio programmes, including a radio programme every fortnight.
- Specific parts of the premises housing the offices have been renovated and furniture has been procured. A hall for the hearing of cases, two mediation rooms and a waiting area were created and furnished. Video conferencing facilities is also available in one of the mediation rooms, which also serves as board room.
- The Arbiter for Financial Services held his first sittings on 26 September 2016 and he has consistently convened further sittings since then.

Strategic Policy

In drawing up of its first combined Strategic Policy for 2017, the Board was conscious of the ever changing operational environment in which the OAFS operates.

The OAFS workload is dictated by the number of complaints it receives and is therefore indeterminate. Although the OAFS has only been in existence since April 2016, around 551 complaints have already been lodged. A substantial percentage of these complaints could be considered as intrinsically similar in nature. The remaining number of complaints are essentially related to allegations of bad investment advice or losses of investment value as a result of failure of investments.

The OAFS workload could essentially increase over the next few months especially once the Arbiter's decisions are finalised. The OAFS' annual report will contain a summary of all complaints made to, and decisions taken by the Arbiter for Financial Services during the previous financial year and of the results of the investigations into these complaints, as well as a review of the trends and patterns observed in the submission of complaints to the Arbiter. In addition, decisions which become *res judicata* will be accessible to the public upon request but customers' names shall be anonymised.

Although mediation is voluntary, the OAFS believes that there is substantial scope for financial providers and customers to embrace this process of resolving disputes. Mediation works when parties wish to pursue resolution of the complaint in an open and cooperative manner. A few cases have been determined by mediation but there is certainly room for the financial sector to embrace mediation and accept to resolve disputes in this manner.

The aim of the OAFS is to build and improve upon our level of service to the general public, to increase awareness of its role amongst the general public and providers and to be proactive in relation to its statutory activities. At the same time, it will seek to ensure that the OAFS continues to be sufficiently resourced to deliver its mandate in a professional and efficient manner. The OAFS' organisational structure is still evolving and there is certainly scope for specialised staff to be recruited to supplement current resources. However, finding the right talent might prove challenging.

The OAFS objectives for 2017 and beyond

The key objective of the OAFS is to work in a transparent, effective, fair and independent manner.

In its operations, the OAFS deals with the public and with a range of private financial services providers. It is therefore reasonable to expect that the OAFS provides an efficient public service. In this section, the OAFS sets out how it proposes to work towards this aim in the year ahead.

Various stakeholders, some of which are long established, make up the financial sector in Malta. The OAFS is a new entrant in this sector but nonetheless it will play a major part in an enhanced local and EU financial services environment.

This document sets out quite a few objectives, some of which are challenging. The OAFS is confident that through the dedication of its staff and all stakeholders, these objectives can be delivered.

INCOME AND EXPENDITURE STATEMENT FOR 2017/2018

The provision of a professional and efficient service to all stakeholders who will deal with the OAFS at any stage is a primary objective of the Office. In order for the OAFS to do so, it has to have the appropriate financial resources. Annex 1 outlines the financial plans for the OAFS for 2017 and is considered to be justified if its objectives are to be met. Circumstances however will dictate necessary changes to it and it will be kept under constant review for its effectiveness.

So far, the Office has been financed by means of subventions made available by the Ministry for Finance. However, the aim is that the OAFS becomes exclusively financed by means of levies on the financial services providers as of 2017.

EU AND INTERNATIONAL OBLIGATIONS

The OAFS acknowledges the benefits that accrue from participating in EU and international fora on redress mechanisms for financial services consumers. In this regard, it will maintain its participation in FIN-NET, the financial dispute resolution network of national out-of-court complaint schemes in the EU, as well as other international ADR schemes. The OAFS will work in close collaboration with other financial services arbiters/ombudsmen to further enhance best practices in the resolution of complaints.

LEGISLATIVE DEVELOPMENTS

The law states that in the event that a financial services provider becomes insolvent within the meaning attributed to that term by any laws or regulations providing for an investor compensation scheme, a depositor compensation scheme or a protection and compensation fund or any other compensation scheme or fund applicable in respect of the financial services provider sector to which that financial services provider belongs, and as a consequence of the said insolvency the financial services provider is not in a position to pay the compensation that has been awarded by or following a decision of the Arbiter, the complainant is notwithstanding any other law, to be paid up to €20,000 from the said fund or scheme applicable in the financial services provider sector to which the financial services provider belongs.

A set of amendment regulations have been drafted by the OAFS, in consultation with the MFSA, with the purpose of extending the scope and coverage of the Depositor Compensation Scheme and the Investor Compensation Scheme to cover the losses of members/participants in these schemes up to the amount of €20,000 not only in favour of complaints who have had a judgement delivered in their favour by the Arbiter for Financial Services, but also to Court judgements. This is in line with the requirements of the Act.

It is envisaged that these amendment regulations become effective during the first quarter of 2017.

RESOLVING COMPLAINTS IN ACCORDANCE WITH BEST PRACTICE AND THE HIGHEST STANDARDS OF CUSTOMER SERVICE

The key function of the OAFS is to deal with complaints from members of the public. Clearly, where a customer feels so strongly about his rights that he makes a formal complaint to the OAFS, this matter must be given the highest priority. People do not complain unless they feel that they are not in a position to exercise control over their personal affairs - helping them is at the heart of the OAFS's function. As the handling of complaints is at the very heart of the OAFS's public service function, it must be ensured that such matters are treated with the highest standard of customer service - including courtesy, timeliness, confidentiality and impartiality. The approach of the OAFS in this area must be to seek to investigate and reach a resolution to the problem at issue.

The OAFS will therefore address complaints as promptly as possible in order to facilitate their speedy and effective resolution; having regard to the varying complexity of some cases, which can have significant implications for time scales.

When a complaint is received it is initially reviewed as to whether it comes within the terms of the Act. If the matter is deemed to be outside the remit of the OAFS, the complainant will be so informed as to why it cannot be investigated. If the matter is within remit then the complaint is sent to the provider for his reply, which needs to be

submitted within 20 days of receipt. This process will generally take place within 3 working days of receipt of the complaint

The OAFS will monitor the expected date of receipt of the provider's reply. On receipt of the response, the OAFS will submit a copy to the complainant together with an invitation for mediation. In parallel, the OAFs will send an invitation to the provider to submit the case for mediation.

If mediation is accepted by both parties, efforts will be made to convene the first mediation meeting at the earliest opportunity. The OAFS will do its utmost to seek a reply from the complainants and the providers at the shortest time possible and it will do its utmost to have the first meeting convened within two weeks from the date the parties are invited for mediation.

If mediation is refused or mediations fails, the case is forwarded to the Arbiter for examination and a sitting is convened.

DEVELOPING STRATEGIES, PROCEDURES AND MATERIALS AIMED AT IMPROVING LEVELS OF ACCESSIBILITY AND AWARENESS BY BOTH CUSTOMERS AND FINANCIAL SERVICES PROVIDERS ABOUT RIGHTS TO COMPLAIN, DEALINGS WITH FINANCIAL SERVICE PROVIDERS AND THE DISPUTE RESOLUTION PROCEDURE OF THE OAFS.

The OAFS is required to provide an accessible service to both customers and Financial Service Providers.

To this end, the OAFS intends to continue with its efforts to disseminate information on its role to various interested bodies such as the media, statutory bodies, customer bodies, lawyers, financial sector representative bodies, and to the general public.

The OAFS also intends to develop its website to maximise access to the OAFS and dissemination of information on complaints procedures. It is envisaged that an online complaint form will be rolled out during the last quarter of 2017 or beginning of 2018.

It is only natural that stakeholders would be interested to know of the OAFS's caseload and the various issues which are brought to the Arbiter for his decision. In order for the OAFS to be able to manage its caseload efficiently, it will develop and implement a Case and File Management System, which will also facilitate the furnishing of statistical reports in fulfilment of its obligations.

DEVELOP THE ABILITIES, SKILLS AND COMPETENCE OF STAFF SO AS TO ENSURE CONTINUED IMPROVEMENT IN ORGANISATIONAL PERFORMANCE

The quality of the OAFS's service to the public is crucially dependent upon the capacity, performance and motivation of its staff. Moreover, if the staff are to give commitment to the work of the OAFS, the Office must show commitment to the development of its staff. In particular, the OAFS must make sure staff have opportunities to participate in training and development on a regular basis, both inside and outside the Office.

The OAFS is a young organisation and it needs to attract the best talent to work on its deliverables. It does recognise that there are gaps in skills and experience necessary to deal with complaints, especially complex cases. Moreover, the OAFS acknowledges that it is competing with other stakeholders for identification of skilled persons willing to develop their career with the Office. It therefore has to offer a competitive package if the OAFS is to be successful in its drive to attract such talent.

The Office also acknowledges that graduates with certain skills - such as mediation – are rather difficult to find. To support and encourage continued staff training and development – especially mediation – the OAFS will organise induction and support programmes, and encourage access to external courses.

The OAFS also intends to develop formal education modules with higher educational bodies in the field of mediation and case analysis.

Periodic internal courses will be held to ensure that all staff comprehend the provisions of the Act and the scope functions of the OAFS.

Regular staff briefings will be held to keep staff informed of general developments.

The development of library and resource materials for internal use will also be catered for.

The Office would also be prepared to host two students from University during the summer period for an internship.

A staff handbook will also be prepared.

EXECUTING THE OAFS'S ROLE AND INDEPENDENT FUNCTIONS IN A MANNER THAT IS TRANSPARENT AND ACCOUNTABLE AND TO LEAD BY EXAMPLE AS A MODEL OF BEST PRACTICE.

The OAFS is a public body, and the requirements of accountability and transparency are essential if it is to retain the confidence of the public. The OAFS's organisational structure will be continuously reviewed to ensure that it supports good internal and external communications, and co-ordination of its activities to achieve effective and optimal outcomes.

Robust, reliable and efficient internal operations are needed in order to support its key public service objectives, and maintain effective working relationships with stakeholders.

To this end, it will prepare annual financial accounts and report in a timely manner in accordance with its statutory obligations. Estimates of expenditures and levy calculations to be prepared by end September each year for onward transmittal to the Minister for Finance in accordance with the law.

Internally, management accounts will be prepared on a quarterly basis. Statistics detailing volume and timeliness of the OAFS's processing of complaints and enquiries will be prepared on a monthly basis.

Administration of the finance and HR role will be constantly reviewed. All monies incoming to the office to be lodged immediately but within 72 hours of receipt at the latest. Petty cash accounts to be reconciled monthly. All invoices to be approved for payment within 5 days of receipt while payments will be made shortly thereafter.

Conclusion

Some of the targets that have been set for 2017 are bold but realisable. We recognise that expectations are high and we must ensure that our setup delivers on the expectations that stakeholders have of the OAFS.

The Arbiter for Financial Services and I would like to thank the Board and all the staff for their commitment and zeal they have displayed in this short period. We look forward to continued progress in the year ahead.

The first Combined Strategic Plan & Income and Expenditure Statement of the OAFS for 2017 have been approved by the Board and are being transmitted to the Hon Minister for Finance in terms of article 9 of the Chapter 555 of the Laws of Malta.



Geoffrey Bezzina
Chairman
Board of Management and Administration

12 December 2016

Income and Expenditure Estimates for 2017 *Explanatory Notes*

Legal basis

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. It has the power to mediate, investigate and adjudicate complaints filed by customers against financial services providers.

In terms of article 9(2)(a) of the said Act, the Board of Management and Administration is required to prepare and approve a statement with estimates of income and expenditure relating to the Office for the year 2017.

The Board approved the projected income and expenditure for 2017 (as featured in the last page of this document).

In terms of article 9(2)(c) and pursuant to article 9(2)(d), the OAFS' estimates for 2017 are being submitted to the Honourable Minister for Finance for his consideration.

Assumptions and Position to-date

In drawing up its first estimates of income and expenditure, the Board has taken cognisance of the fact that the OAFS formally started its operations in mid-May 2016. Some assumptions have had to be made based on the relatively short span of time that the Office has been operating.

As at the date of this report, the Ministry of Finance has channelled EUR350,000 to the OAFS, of which around EUR170,000 has been expended.

Income

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

The amount of fees which the OAFS expects to receive from the financial services sector is a crude estimate. To this end, it is being proposed that the government will continue to provide financial assistance to the OAFS until such time that the exercise to collect levies and fees gets underway and to make good for any shortfalls in the OAFS' budget for 2017 should there be any delay with the launch of the levy and fee structure as proposed or the amount received from levies and fees falls short of the estimated expenditure.

Expenditure

A major part of the OAFS' budget is allocated to salaries and benefits to staff. Other than the Arbiter for Financial Services (whose salary is reimbursable from the Consolidated Fund) and the executive Chairman, the current staff complement of the OAFS is composed of the following officials:

- One Case Analyst
- One Customer Relations Office
- One Officer in charge of mediation
- One PA to the Arbiter
- One Administrative Assistant
- One Receptionist
- One Support Staff (part-time)
- One Driver

If the stream of complaints which have been filed with the OAFS so far continues in 2017, it is most likely that the Office would need to recruit more staff in order to cope with the workload and meet the demanding requirements of the Act for the timely processing of complaints.

The Board is also aware that the OAFS would not be able to provide a professional and efficient service to stakeholders unless it has competent and qualified personnel within its ranks. The OAFS is competing with the financial services industry for talent which may not be readily available unless the package it offers is sufficiently competitive to be able to attract (and retain) suitable and competent personnel within it.

The Board also intends to carry out a number of improvements to its premises. The offices from which the OAFS is operating have been made available by the Ministry for Finance.

Projected Income and Expenditure - 2017 (All amounts in euro)

Revenue	
Government of Malta subvention	200,000
Fees and levies from the financial sector	1,125,074
TOTAL ESTIMATED REVENUE	€ 1,325,074
Expenditure	
A. Personal Emoluments and Benefits	
Salaries and Wages	647,656
Bonuses	11,264
Social Security Contributions	57,026
Allowances	53,078
Overtime	2,750
Honoraria to members of the Board	9,000
Health Insurance	15,300
Contingency Reserve	100,000
	896,074
B. Operational and Maintenance Expenses	
Utilities	15,000
Repair and Upkeep	50,000
International Memberships	5,000
Office Services	10,000
Transport	20,000
Travel	10,000
Information Services	10,000
Contractual Services	10,000
Professional & Expert Services	25,000
Training	25,000
Hospitality	8,000
Incidental Expenses	6,000
Improvements to property	50,000
Equipment	8,000
Security Services	10,000
Case Management System	15,000
Hosting of FIN-NET Plenary	12,000
Contingency Reserve	50,000
	339,000
C. Capital Expenditure	
Monitors	10,000
Other office equipment	30,000
Other furniture	50,000
	90,000
TOTAL ESTIMATED EXPENDITURE	€ 1,325,074