

Frequently Asked Questions

Settlement Framework

1. What is a Settlement?

A Settlement provides an avenue for reaching outcomes in certain enforcement cases where there is mutual agreement between the Financial Services Commission (the “Commission”) and a licensee that the latter has committed breaches which are supported by facts and evidence.

An early acknowledgement by a licensee of breaches of any provision of the relevant laws will be considered favourably by the Commission.

N.B: ‘Settlement’ in the regulatory context is not the same as Settlement of a commercial dispute. Since Settlement is a regulatory decision, due consideration must be given to the statutory objectives of the Commission when agreeing the terms of any Settlement.

2. Who can initiate Settlement process?

A licensee who is facing the prospect of enforcement action(s) can make a written request to the Commission to consider the matter for Settlement. The responsibility for requesting/initiating settlement discussion rests with the licensee.

3. Who is a licensee?

A licensee is defined in section 2 of the Financial Services Act (“FSA”).

4. Why settle?

Settlement can be a mutually beneficial option for both the licensee and the Commission since early resolution of a matter can benefit all parties concerned. Settlement also provides a means for the expeditious resolution of issues.

5. How can Settlement discussions be initiated?

A licensee who is facing the prospect of enforcement action(s) may make a written request to the Chief Executive of the Commission specifying clearly therein, its intention to settle the matter.

6. When can a licensee initiate Settlement discussions?

Settlement is possible at any stage of the enforcement process¹, as long as the Commission is satisfied that it has a sufficient understanding of the nature and gravity of the breach to make a reasonable assessment and arrive at an appropriate outcome. However, Settlement requests under this framework will not be entertained after a Decision Notice² has been issued by the Enforcement Committee (“EC”).

If a licensee is seeking to settle a matter which has been referred to the EC, the licensee must inform the EC that it has sent a letter of request for Settlement to the Commission.

¹ The enforcement process encompasses the enforcement information gathering, investigation, inquiry and show cause stages.

² A Decision Notice is a notice issued by the Enforcement Committee to the person stating the type and the terms of the administrative sanctions where the Enforcement Committee decides to impose an administrative sanction (after considering the written representations or where no written representations have been received within the time specified in the Warning Notice).

7. Will an ongoing investigation/inquiry cease or be put on hold when the Settlement process is initiated?

Settlement discussions will take place in parallel with any investigation/inquiry/formal consideration of enforcement action which have already started, and these will continue unless the matter is resolved. The licensee is therefore expected to extend its full cooperation with regards to any query which may be raised during any ongoing investigation or inquiry.

8. What factors will be taken into consideration when determining whether and how to settle a case?

The Chief Executive and the Settlement Committee (the “SC”) will take into account a number of factors which *inter alia* include those set out in the Enforcement Manual. The Enforcement Manual is accessible [here](#).

These factors include, but are not limited to, the following:

- What is the nature of the breach? How serious is it? What is the impact of the breach? Is the breach ongoing?
- What was the role of the officer in the breach?
- Will a Settlement achieve a proportionate and dissuasive outcome?
- What is the disciplinary record and compliance history of the licensee?
- What is the likelihood that the licensee will comply with the terms of the Settlement Agreement?
- What are the prospects of a swift and appropriate resolution of the matter?
- Will a Settlement have the desired deterrent effect?

These 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.

9. Will the Settlement discussions be conducted on a “*without prejudice*” basis?

Yes.

10. What happens if no agreed outcome is reached?

In such instance, the matter will proceed in accordance with the formal enforcement process.

‘Without prejudice’- correspondence and any material submitted in the context of Settlement discussions will not be used or referred to at any stage in the formal enforcement process.

11. Who can attend the Settlement discussions?

Any member of the board or senior management of a licensee may attend the discussions. A licensee may be accompanied by a law practitioner³. 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 the discussions.

On the part of the Commission, the Chief Executive and/or SC may co-opt any person or involve such technical assistance that is considered necessary for constructive Settlement discussions to arrive at an appropriate outcome.

12. How is the Settlement process concluded?

Once the terms of the Settlement have been agreed, these will be put in writing and the approval of the Board of the Commission will be sought as soon as is

3. As per the Law Practitioners Act, a law practitioner means a barrister, an attorney or a notary whose name has been entered on, and not been erased from, the Roll.

reasonably practicable. Thereafter, a Settlement Agreement will be signed by both parties.

13. How long does the Settlement process last?

Settlement discussions that do not proceed expeditiously are likely to have a prejudicial effect on an investigation/inquiry or the enforcement process generally.

Therefore, the Settlement discussions are expected not to exceed 60 calendar days from the date of the confirmation sent to the licensee that Settlement discussions may proceed. Once initiated by the licensee, the Commission will, on a best endeavours basis, expedite discussions.

14. What happens when the Settlement Agreement is breached?

Failure to comply with the terms of the Settlement Agreement will be regarded by the Commission as a serious matter. In such circumstances, the Commission will consider appropriate action(s) in respect of the failure to comply with the terms, as well as, the original non-compliance. The Commission's rights to seek any other civil or criminal sanction that is deemed appropriate is not prejudiced.

15. How does the penalty reduction scheme work?

The Commission may apply a reduction to an administrative penalty on a sliding scale, depending on the timing as to when the Settlement was 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%

16. Will the outcome of the Settlement be published?

Yes. The Commission may proceed to publish such details as it deems appropriate.