SUBSIDIARY LEGISLATION 371.21

EQUITY RELEASE FINANCIAL PRODUCTS REGULATIONS

1st September, 2019

LEGAL NOTICE 193 of 2019.

ARRANGEMENT OF THE REGULATIONS

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PART I
Preliminary

Citation and aim.

1. (1) The title of these regulations is Equity Release Financial Products Regulations.

(2) The purpose of these regulations is to regulate equity release financial products in order to provide a solution for the elderly enabling them to enjoy their retirement in their own home whilst releasing part of the equity built over the years in such home.

PART II
Interpretation

Interpretation.

2. In these regulations, unless the context otherwise requires:

"advertisement" means any form or medium of marketing activity or communication, other than a prospectus, which promotes the purchase of the Equity Release Financial Product, and which is addressed by a creditor to a consumer. An advertisement shall not include the provision of a personal recommendation but shall include any advertisement which is

disseminated to the public via all types of media. The form or medium of an advertisement may include any of the following:

(a) addressed or unaddressed printed matter;

(b) electronic message or advertisement received via a mobile telephone or pager;

(c) standard letters;

(d) press advertising with or without order form;

(e) catalogue;

(f) telephone with or without human intervention;

(g) seminars and presentations;

(h) radio;

(i) videophone;

(j) videotext;

(k) e-mail;

(l) fax;

(m) television;

(n) notice;

(o) billboards;

(p) posters;

(q) brochure;

(r) web posting including internet banners,

and the term "advertising" shall be construed accordingly;

"advisory services" means the provision of personal recommendations to a consumer in respect of one or more transactions relating to equity release financial products and constitutes a separate activity from the equity release financial product;

"ancillary service" means a service offered to the consumer in conjunction with the equity release financial

product;

"annual percentage rate of charge" or "APRC" means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of the credit, where applicable, including the costs referred to in regulation 29(2) and equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the creditor and the consumer;

"borrowing rate" means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;

"bundling practice" means the offering or the selling of an equity release financial product in a package with other distinct financial products or services where the equity release financial product is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services;

"business day" means a day other than Saturdays and Sundays and public holidays on which creditors are open for business;

"competent authority" means the Malta Financial Services Authority established under the Malta Financial Services Authority Act; Cap. 330.

"consumer" means any individual who has attained pension age, as defined in the Social Security Act, and who is acting for purposes which are not related to and outside his trade, business, craft or profession; Cap. 318.

"CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;

"credit" means the equity release financial product consisting of a credit falling within the scope of these regulations in accordance with regulation 3;

"credit agreement" means an agreement whereby a creditor, grants or promises to grant, to a consumer, credit in the form of an equity release financial product, and shall be distinct from the public deed of loan;

"creditor" means a legal person who, duly authorised, grants or promises to grant credit in the form of an equity release financial product in the course of his trade, business or profession;

Cap. 586.

"Data Protection legislation" means the Data Protection Act and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;

"Directive 2005/29/EC" means Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directive 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council, as amended from time to time;

"durable medium" means any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

"equity release financial product" means the same as the definition assigned to it under regulation 3;

"European creditor" means a credit institution which is authorised in another Member State in terms of the CRD and which has exercised its right to establish a branch or to provide services in Malta in terms of the CRD;

Cap. 376.

"financial institution" means a financial institution as defined in regulation 2(1) of the Financial Institutions Act;

Cap. 330.

"Financial Services Tribunal" means the Financial Services Tribunal established under the Malta Financial Services Authority Act;

"fixed borrowing rate" means that the creditor and the consumer agree in the credit agreement on one borrowing rate for the entire duration of the credit agreement or on several borrowing rates for partial periods using exclusively a fixed specific percentage. If not all borrowing rates are determined in the credit agreement, the borrowing rate shall be deemed to be

fixed only for the partial periods for which the borrowing rates are determined exclusively by a fixed specific percentage agreed on the conclusion of the credit agreement;

"group" means a group of creditors which are to be consolidated for the purposes of drawing up consolidated accounts, as defined in Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, as may be amended from time to time;

"home Member State" means the Member State in which the creditor's registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;

"host Member State" means the Member State, other than the home Member State, in which the creditor has a branch or provides services;

"Information Document" means the Information Document set out in the First Schedule;

"Member State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent acts;

"Notary Public" means the same as the definition assigned to it under article 2(1) of the Notarial Profession and Notarial Archives Act; Cap. 55.

"public deed of loan" means the legal instrument signed before a Notary Public as part of the security required by the creditor in the credit agreement;

"staff" means:

(a) any natural person working for the creditor who is directly engaged in the activities covered by these regulations or who has contacts with consumers in the course of activities covered by these regulations;

(b) any natural person directly managing or supervising the natural persons referred to in paragraph (a);

"total amount of credit" means the ceiling or the total sums made available under a credit agreement;

"total amount payable to the consumer" means the total amount of the credit less the total cost of such credit to the consumer;

"total cost of the credit to the consumer" means all the costs, including interest, commissions, taxes and any other kind of fees and, or charge howsoever described, or to whomsoever it is paid, which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, including the cost of valuation of property where such valuation is necessary to obtain the credit, but excluding:

(a) notarial fees;

(b) Public Registry and Land Registry fees;

(c) costs relating to searches regarding title;

(d) costs related to property valuation, unless such valuation is required by the creditor;

(e) costs associated with the provision of security;

(f) stamp duties;

(g) any other fees ancillary to the publication of the public deed of loan;

(h) any other registration fees for the transfer of ownership of the immovable property; and

(i) any charges payable by the consumer for non- compliance with the commitments laid down in the credit agreement:

Provided that costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain such credit on the terms and conditions marketed;

"tying practice" means the offering or the selling of an equity release financial product in a package with other distinct financial products or services where the equity release financial product is not made available to the consumer separately;

"variable borrowing rate" means that the creditor and the consumer agree in the credit agreement on a borrowing rate based on an underlying index or reference rate that changes periodically.

PART III
Scope and Application

Scope and application.

3. These regulations shall apply to equity release financial products consisting of equity release credit agreements where the creditor:

(a) grants on loan a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of a residential immovable property or a right relating to residential immovable property; and

(b) will not seek repayment of the credit until the occurrence of the death of the consumer or his/her move to long-term care or any one or more other specified life events of the consumer as may be defined by the competent authority, unless the consumer breaches his contractual obligations which allows the creditor to terminate the credit agreement:

Provided that the creditor cannot commence proceedings, judicial or otherwise, for the sale or other transfer of the property securing the equity release financial product for a period of at least thirty six (36) months from the death of the consumer or his/her move to long-term care:

Provided further that, in the case of a move into long-term care, the creditor and the consumer may agree to retain the equity release financial product even after the lapse of such thirty six (36) month period, for so long as such agreement subsists, until the death of the consumer,

and any such other product as may be defined as an equity release financial product by the competent authority from time to time.

Undertaking against negative equity and no additional security.

4. The parties to an equity release financial product shall expressly agree that the transfer to the creditor of the security or proceeds from the sale of the security is sufficient to repay the credit. There shall be an undertaking by the creditor against negative equity so that on termination of the equity release financial product the consumers or their heirs will never be obliged to pay more to the creditor than the value of the residence (the security for the equity release financial product). The creditor shall not have the right to request any security for the equity release financial product other than a charge over the residence of the borrower or a right relating thereto and a charge over an adequate property insurance over such residence or right relating thereto.

PART IV

Competent Authority

Competent authority.

5. (1) The competent authority for the purposes of these regulations shall be the Malta Financial Services Authority.

Cap. 9.

(2) Without prejudice to the provisions of the Criminal Code, officers of the competent authority, including past and present officers, as well as auditors or experts acting on behalf of the competent authority, shall be governed by the obligation of professional secrecy and shall not disclose any information received in the course of carrying out their supervisory and other duties to any person or authority, unless such disclosure of information is done in summary or collective form:

Provided that the said officers, auditors or experts may divulge such information for the purpose of the performance of their duties or the exercise of their functions, or when lawfully required to do so by any court or under a provision of any law:

Provided further that this sub-regulation shall not prevent the competent authority from exchanging or transmitting confidential information in accordance with national and European Union law.

Powers and duties of the competent authority.

6. (1) It shall be the duty of the competent authority to carry out the functions and duties prescribed by these regulations and to ensure that creditors carrying out their activities in Malta comply with these regulations and any directives made or issued thereunder.

(2) Without prejudice to any of the powers conferred by these regulations, the competent authority may, whenever it deems necessary, give, by notice in writing, such directives as it may deem appropriate in the circumstances in order to carry out the functions and duties prescribed by these regulations:

Provided that the power to give directives under this sub-regulation shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.

(3) The competent authority may issue rules for the better carrying out and to better implement the provisions of these regulations.

(4) The competent authority shall monitor the activities of creditors so as to assess compliance with the requirements of these regulations and any directives made or issued thereunder.

(5) Any person to whom a notice is given in accordance with sub-regulation (2) shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive.

(6) Where the competent authority is satisfied that the

circumstances so warrant, it may at any time make public any directive it has given under the provisions of this regulation.

Enforcement and monitoring.

7. It shall be the responsibility of the competent authority to:

(a) monitor the working and effectiveness of these regulations and to take such measures as may be deemed necessary in order to ensure compliance with these regulations; and

(b) supervise creditors in terms of these regulations and ensure that there is compliance by them with the obligations established under these regulations.

Investigations.

8. (1) Any officer, employee or agent of the competent authority may, for the purposes of regulation 7, carry out investigations on and, or, on-site inspections at the premises of, any person who appears to be in possession of relevant information.

(2) For the purposes of sub-regulation (1), the competent authority may appoint one or more competent persons, as inspectors, to investigate and report on the nature, conduct or state of the creditor's business or any particular aspect of it:

Provided that if any such person appointed under this sub- regulation deems it necessary for the purposes of his investigation or for the purposes of an on-site inspection, he may also investigate and report on the business of any person who is or has at any relevant time been involved with, or in any matters of, the creditor concerned, including:

(a) a holding company, subsidiary or a company which is a connected person of the creditor under investigation; or

(b) a subsidiary or a company which is a connected person of a holding company of that creditor; or

(c) a holding company of a subsidiary of that creditor; or

(d) a controller of that creditor; or

(e) an outsourcing service provider of that creditor.

(3) Where the competent authority decides to investigate the business of, or carry out an on-site inspection at the premises of, any person in terms of sub-regulation (1), it shall inform that person by notice in writing.

(4) It shall be the duty of every person who is or was an officer or employee of, or who is otherwise related to the creditor,

which is under investigation in terms of these regulations:

(a) to produce to the person or persons appointed under sub-regulation (2), within such time and at such place as they may require, all documents relating to the person concerned which are in his custody or power;

(b) to attend before the person or persons so appointed at such time and place as they may require; and

(c) otherwise to give such person or persons all assistance in connection with the investigation which he is reasonably able to give, and such person or persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) A person exercising powers by virtue of an appointment under this regulation shall, if so required, produce evidence of his authority.

(6) No person shall:

(a) without lawful excuse fail to produce any documents which it is his duty to produce under sub-regulation (4);

(b) without lawful excuse fail to attend before the person or persons appointed under sub-regulation (2) when required to do so; or

(c) without lawful excuse fail to answer any question which is put to him by persons so appointed.

(7) A statement made by a person in compliance with a requirement imposed by virtue of this regulation may be used as evidence against him.

(8) The competent authority shall have the power to order that all expenses of, and incidental to, an investigation pursuant to this regulation be paid by the creditor concerned.

Right of entry to obtain information and documents.

9. (1) Any officer, employee, agent or inspector of the competent authority may, on producing, if required, evidence of his authority:

(a) enter any premises occupied by a person on whom a notice has been served in terms of regulation 8 for the purpose of obtaining the information or documents required by that notice;

(b) enter any premises occupied by any person on whom a notice could be served in terms of regulation 8 for the

purpose of obtaining there such information or documents as may be specified by the competent authority, being information or documents that could have been required by such a notice:

Provided that the competent authority shall not authorise any person to act under paragraph (b) unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed:

Provided further that where an entry as is mentioned in this sub-regulation involves premises that are occupied for the purposes of habitation, such entry shall be carried out in the presence of an officer of the Police of a rank not below that of inspector and shall moreover not take place between nine in the evening and five in the morning.

(2) No person shall intentionally obstruct a person exercising rights conferred by this regulation.

PART V
Financial Education of Consumers

Financial education of consumers.

10. (1) The competent authority shall promote measures that support the education of consumers in relation to equity release financial products.

(2) The competent authority shall provide clear and general information to consumers on equity release financial products, in order to guide consumers, especially those entering into an equity release financial product for the first time. The competent authority shall also disseminate information to consumers regarding the guidance which may be published from time to time by creditors in accordance with sub-regulation (5), as well as regarding any guidance on equity release financial products, which may be provided to consumers by consumer organisations from time to time.

(3) In order to carry out the obligation prescribed in sub-regulation (2), the competent authority may request the assistance of creditors, in writing, who shall assist and provide the competent authority in a timely manner, with any information which the competent authority may require.

(4) The competent authority may also request creditors, in writing, to provide clear and general information to consumers on equity release financial products, in order to guide consumers, especially those entering into an equity release financial product for the first time.

(5) Any information provided to consumers by the competent authority in accordance with sub-regulation (2) and any information which creditors are required to provide to consumers in

accordance with sub-regulation (4) shall be made publicly available.

PART VI
Obligations of the Creditor

Obligation to comply with regulations.

11. A creditor shall take all necessary steps to ensure full compliance with these regulations.

Obligation to provide information free of charge to consumers.

12. When information is provided to consumers in compliance with the requirements set out in these regulations, such information shall be provided free of charge to the consumer.

Conduct of business obligations when providing credit to consumers.

13. (1) When manufacturing and distributing equity release financial products falling within the scope of these regulations in accordance with regulation 3, or granting or providing advisory services on equity release financial products and, where appropriate, ancillary services to consumers or when executing an equity release financial product, the creditor shall act in accordance with the following principles:

(a)	Good faith, honesty and integrity	The creditor must conduct its business in good faith, with honesty and integrity.
(b)	Professionalism, skill, care and diligence	The creditor must conduct its business with professionalism, due skill, care and diligence.
(c)	Management and control	The creditor must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
(d)	Market conduct	The creditor must observe proper standards of market conduct.
(e)	Consumers' rights and interests	The creditor must pay due regard to the rights and interests of its consumers and treat them fairly.
(f)	Communications with consumers	The creditor must pay due regard to the information needs of its consumers, and communicate information to them in a way which is clear, fair and not misleading.
(g)	Conflicts of interest	The creditor must manage conflicts of interest fairly and reduce same to the lowest practical level, and, when they cannot be avoided, the creditor must disclose them to the consumer and disclose the steps taken to mitigate them.
(h)	Consumers: relationships of trust	The creditor must take reasonable care to ensure that the advice is suitable for the consumer who is entitled to rely upon its judgment. Any suitability assessment carried out must be properly documented.

(i)	Consumers' assets	The creditor must arrange adequate protection for consumers' assets when it is responsible for them.
(j)	Relations with the competent authority	The creditor must deal with the competent authority in an open and cooperative way, and must disclose to the competent authority appropriately anything relating to the creditor of which the competent authority would reasonably expect notice.

Provided that in relation to the granting or provision of advisory services on credit and, where appropriate, of ancillary services, the activities shall be based on information about the consumer's circumstances and any specific requirement made known by a consumer and on reasonable assumptions about risks to the consumer's situation over the term of the credit agreement:

Provided further that in relation to such provision of advisory services, the activity shall in addition be based on the information required under regulation 18(3)(a).

(2) Creditors shall ensure that the manner in which their staff are remunerated does not impede compliance with the obligation to act in accordance with the obligation set out in sub-regulation (1).

(3) Creditors providing advisory services shall also ensure that the remuneration structure of the staff involved does not prejudice their ability to act in the consumer's best interest and in particular is not contingent on sales targets./pp.

(4) In addition and without prejudice to the foregoing, creditors shall ensure that:

(a) All their actions promote public confidence in equity release as a potential retirement solution.

(b) Consumers shall have the right to live in their homes (the security for the equity release financial product) as their main residence throughout the term of the equity release financial product until the survivor (in case of joint borrowers) dies or moves into long-term care:

Provided that the creditor cannot commence proceedings, judicial or otherwise, for the sale or other transfer of the property securing the equity release financial product for a period of at least thirty six (36) months from the death of the consumer or his/her move to long-term:

Provided further that, in the case of a move into long-term care, the creditor and the consumer may agree to retain the equity release financial product even after the lapse of such thirty six month period, for so long as such agreement

subsists, until the death of the consumer.

For the purposes of these regulations "moves into long term care" shall be evidenced by a written declaration of the management of the home for the aged where the consumer resides or is going to reside, stating that in the present circumstances, it is reasonable to believe that the consumer will be staying at the home for the aged and will not be returning to his/her main residence.

(c) Following the termination of the equity release financial product, for whatever reason, there shall be a period of at least thirty-six (36) months before which the creditor cannot commence proceedings, judicial or otherwise, for the sale or other transfer of the property securing the equity release financial product.

In the case of termination of the equity release financial product because the consumer has moved into long term care, the said period of thirty six (36) months shall start to run from the day the consumer moves into long term care.

In the case of termination of the equity release financial product because the consumer has died, if the consumer had not moved into long term care, the said period of thirty six (36) months shall start to run from the death of the consumer.

In the case of termination of the equity release financial product because the consumer has died, if the consumer had moved into long term care, the said period of thirty six (36) months shall start to run from the day the consumer moved into long term care.

In any case, the consumer or the heir/s of the deceased consumer, as applicable, shall be free to repay the equity release financial product in full against the release of the property securing the equity release financial product.

(d) Equity release financial products shall be provided only to consumers who have attained pension age, as defined in the Social Security Act and, in case of joint borrowers, both borrowers shall have attained pension age, as defined in the Social Security Act.

Cap. 318.

Cap. 318.

(e) The liability of the consumer under the equity release financial product at the termination of the equity release financial product, as estimated by the creditor at the commencement of the equity release financial product, shall not exceed sixty per cent (60%) of the value of the property securing the equity release financial product at the commencement of the equity release financial product, which

valuation shall be procured by the creditor.

(f) The borrowing rate/s of the equity release financial product shall be fixed or capped for the whole duration of the equity release financial product.

(g) Consumers shall have the right to move to a main residence different from the main residence securing the equity release financial product without incurring any financial penalty by the creditor:

Provided that the new main residence to be granted as security shall be of the same value or more:

Provided further that the consumers shall bear any costs related to the constitution of security over the new main residence and cancellation of the security over the old main residence.

(h) Consumers shall be given a strong recommendation to seek independent professional advice in relation to the equity release financial product from a lawyer or accountant of the consumers' choice, which lawyer or accountant is duly authorised to practice in Malta.

(i) Consumers have considered all alternative courses of action (such as selling current residence and moving to a smaller residence, or renting out part of current residence) that could deliver the consumer's objective without recourse to equity release financial products.

(j) Creditors shall assess the physical and mental health of the consumer in relation to the equity release financial product and in case of reasonable doubt, shall refer the consumer to the appropriate health specialist for proper certification.

Knowledge and competence requirements for staff.

14. (1) Creditors shall require their staff to possess and to keep up-to-date an appropriate level of knowledge and competence in relation to the manufacturing, the offering or granting of equity release financial products, or the provision of advisory services.

(2) Where the conclusion of an equity release financial product includes an ancillary service, creditors shall also require their staff to possess and to keep up-to-date an appropriate level of knowledge and competence in relation to that ancillary service.

(3) Where Malta is the host Member State, and a European creditor provides its services within the territory of Malta:

(a) through the establishment of a branch, the competent authority shall be satisfied with the level of

knowledge and competence of the staff of such a branch offering equity release financial products in accordance with the requirements set out in the Third Schedule;

(b) under the freedom to provide services, the competent authority may establish the minimum knowledge and competence requirements for those requirements referred to in paragraphs (b), (c), (e) and (f) of item 1 of the Third Schedule.

(4) The competent authority shall supervise European creditors authorised to provide their services in Malta in order to ensure compliance with the requirements of sub-regulations (1) to (3):

Provided that for the purposes of this sub-regulation, the competent authority shall have the power to require such European creditors to provide such evidence as the competent authority may deem necessary.

(5) Any criteria established by the competent authority in order for creditors' staff to meet their professional requirements shall be made public.

PART VII
Information and practices preliminary to the conclusion of the credit agreement

Obligation to provide pre-contractual information.

15. (1) The creditor shall provide the consumer with the personalised information needed to compare the equity release financial products available on the market, assess their implications and make an informed decision on whether to conclude a credit agreement:

(a) without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences;

(b) in good time before the consumer is bound by any credit agreement or offer; and

(c) on paper or on another durable medium.

(2) The personalised information referred to in sub-regulation (1) shall be provided by means of the Information Document, as set out in the First Schedule.

(3) Creditors shall provide the Information Document to the consumer before the provision of an offer binding on the creditor:

Provided that when an offer binding on the creditor is provided to the consumer, it shall be provided on paper or on another durable medium and, where characteristics of the offer are different

from the information contained in the Information Document previously provided in accordance with this sub-regulation, it shall be accompanied by an updated Information Document.

(4) The consumer shall be entitled to a full fourteen (14) day period, in order to ensure that sufficient time to compare offers, assess their implications and make an informed decision, is allowed to the consumer:

Provided that the time period referred to in this sub-regulation shall be a reflection period before the conclusion of the credit agreement:

Provided further that the reflection period specified in this sub-regulation shall:

(a) be binding on the creditor for the duration of the reflection period; and

(b) allow that the consumer may accept the offer at any time during the reflection period.

(5) The creditor who has supplied the Information Document to the consumer shall be deemed to have fulfilled the requirements regarding information provision to the consumer prior to the conclusion of a distance contract as laid down in regulation 5 of the Distance Selling (Retail Financial Services) Regulations and shall be deemed to satisfy the requirements of regulation 6(1) of the Distance Selling (Retail Financial Services) Regulations only where they have at least supplied the Information Document prior to the conclusion of the contract.

S.L. 330.07.

S.L. 330.07.

(6) The Information Document model set out in the First Schedule shall not be modified:

Provided that where the creditor wishes to provide to the consumer any additional information, and, or where the creditor is required by national law to provide to the consumer any additional information, such additional information shall be given in a separate document which may be annexed to the Information Document.

(7) In case of voice telephony communications, as referred to in regulation 5(3) of the Distance Selling (Retail Financial Services) Regulations, the description of the main characteristics of the financial service to be provided in accordance with sub- paragraph (ii) of the proviso to sub-regulation (3)(a) of regulation 5 of the Distance Selling (Retail Financial Services) Regulations, shall include at least the items referred to in sections 2 to 5 of Part A of the First Schedule.

S.L. 330.07.

S.L. 330.07.

(8) The creditor shall, at the time of the provision of an offer binding on the creditor, provide the consumer with a copy of the draft conditions to be eventually entered into the credit agreement.

Adequate explanations.

16. (1) Creditors shall provide adequate explanations to the consumer on the proposed equity release financial product and any ancillary services, in order to place the consumer in a position enabling him to assess whether the proposed equity release financial product and ancillary services are adapted to his needs and financial situation.

(2) The adequate explanations referred to in sub-regulation (1) shall, where applicable, include in particular:

(a) an explanation of the information and terms included in the pre-contractual information;

(b) the essential characteristics of the product proposed;

(c) the specific effects the products proposed may have on the consumer, including, if applicable, the consequences of:

(i) default in payment by the consumer;

(ii) delayed termination of the equity release financial product due to extended longevity of the consumer; and

(iii) fall in the market value of the residence (the security for the equity release financial product) on termination of the equity release financial product; and

(d) where ancillary services are bundled with an equity release financial product, whether each component of the bundle can be terminated separately and the implications for the consumer of doing so.

(3) The competent authority may adapt the manner by which and the extent to which the explanations referred to in sub-regulations (1) and (2) are given, as well as by whom they are given, to the circumstances of the situation in which the equity release financial product is offered, the person to whom it is offered and the nature of the credit offered.

Content of pre-contractual information.

17. (1) Creditors shall make available clear and comprehensible general information about equity release financial products at all times on paper or on another durable medium or in electronic form, and as much as possible, in plain English language or, upon the request of the consumer, in the Maltese language, or in any other language agreed upon between the creditor and the consumer.

(2) The general information referred to in sub-regulation (1) shall include at least the following:

(a) the identity and the geographical address of the creditor;

(b) the purposes for which the credit may be used;

(c) the forms of security, including, where applicable, the possibility for it to be located in another different Member State;

(d) a description of the types of credit agreements available, including a short description of the differences between fixed and variable rate products and the related implications for the consumer;

(e) a list of related cost elements, such as administrative costs, insurance costs and legal costs;

(f) an indication of the cost of a typical credit agreement for the consumer;

(g) the possible duration of the credit agreement;

(h) the types of available borrowing rates, the conditions governing the application of such rates and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions, and procedures for changing the borrowing rate:

Provided that if different rates apply in different circumstances, the above information shall be supplied in respect of all the applicable rates:

Provided further that the borrowing rate/s shall be fixed or capped for the whole duration of the equity release financial product;

(i) an indicative example of the total amount of credit, the total cost of credit to the consumer, the total amount payable by the consumer and the APRC;

(j) an indication of possible further costs, not included in the total cost of the credit to the consumer, to be paid in connection with an equity release financial product;

(k) the range of different options available for reimbursing the credit to the creditor, including, where applicable, the number, frequency and amount of the regular repayment instalments;

(l) a description of the conditions directly relating to early repayment;

(m) whether a valuation of the property is necessary and, where applicable, who is responsible for ensuring that the valuation is carried out, and whether any related costs arise for the consumer;

(n) where applicable, details on how to obtain information on tax relief on the equity release financial product interest or other public subsidies;

(o) an indication of ancillary services the consumer is obliged to acquire in order to obtain the equity release financial product or to obtain it on the terms and conditions marketed and, where applicable, a clarification that the ancillary services may be purchased from a provider that is not the creditor; and

(p) a general warning concerning possible consequences of non-compliance with the commitments linked to the equity release financial product.

(3) The competent authority may oblige creditors to include other types of warnings which are relevant in Malta.

PART VIII
Advisory Services

Standards for advisory services.

18. (1) The creditor shall explicitly inform the consumer, in the context of a given transaction, whether advisory services are being or can be provided to the consumer.

(2) Before the provision of advisory services or, where applicable, the conclusion of a contract for the provision of advisory services, the creditor shall provide the consumer with the following information on paper or another durable medium:

(a) whether the recommendation will be based on considering only their own product range in accordance with sub-regulation (3)(b) or a wide range of products from across the market in accordance with sub-regulation (3)(c) so that the consumer can understand the basis on which the recommendation is made;

(b) where applicable, the exact fee payable by the consumer for the advisory services or, where the amount cannot be ascertained at the time of disclosure, the method used for its calculation:

Provided that the information referred to in paragraphs (a) and (b) may be provided to the consumer in the form of additional pre-contractual information.

(3) Where advisory services are provided to consumers, in addition to the requirements set out in regulations 13 and 14:

(a) creditors shall obtain the necessary information regarding the consumer's personal and financial situation, and objectives so as to enable the recommendation of suitable equity release financial products. Such an assessment shall be based on information that is up to date at that moment in time and shall take into account reasonable assumptions as to risks to the consumer's situation over the term of the proposed equity release financial product;

(b) creditors shall consider a sufficiently large number of equity release financial products in their product range and recommend a suitable equity release financial product from among their product range for the consumer's needs, financial situation and personal circumstances;

(c) creditors shall act in the best interests of the consumer by:

(i) informing themselves about the consumer's needs and circumstances; and

(ii) recommending suitable equity release financial products in accordance with paragraphs (a) and (b); and

(d) creditors shall give the consumer a record on paper or on another durable medium of the recommendation provided.

(4) The use of the term "independent advice" and "independent advisor" or similar terms shall be prohibited when the advisory services are being provided to consumers by creditors.

(5) Creditors shall issue a written warning to a consumer when, considering the consumer's financial situation, an equity release financial product may include a specific risk for the consumer.

(6) This regulation is without prejudice to regulation 16 and to the competent authority's competence to ensure that services are made available to consumers to help them understand their financial needs and which types of products are likely to meet those needs.

PART IX
Data Protection

Collection and processing of personal data.

19. Without prejudice to the provisions of the Data Protection legislation, personal data obtained from a consumer or any other person in connection with the conclusion and management of any equity release financial product may only be processed for the purpose of concluding and managing such equity release financial product in accordance with these regulations.

PART X
Property Valuation

Property valuation.

20. (1) Creditors shall ensure that the standards applicable in Malta are used where they carry out a property valuation, or shall take reasonable steps to ensure that those standards are applied where a valuation is conducted by a third party.

(2) Creditors shall also ensure that internal and external appraisers conducting property valuations are professionally competent and sufficiently independent from the credit underwriting process relating to equity release financial products so that they can provide an impartial and objective valuation, which shall be documented in a durable medium and of which a record shall be kept by the creditor.

PART XI
Rights of the Consumer

Right to receive copy of the credit agreement.

21. (1) Without prejudice to regulations 15 to 17, the consumer shall be entitled to receive, free of charge, a copy of the draft credit agreement:

Provided that this sub-regulation shall not apply if the creditor is, at the time of the consumer's request, unwilling to proceed to the conclusion of the credit agreement with the consumer.

Cap. 55.

(2) Without prejudice to the Notarial Profession and Notarial Archives Act, the consumer shall be entitled to receive from the Notary Public:

(a) a copy of the public deed of loan, at his request, immediately upon the signing thereof; and

(b) in all instances, a copy of the public deed of loan duly registered at the Public Registry by the Notary Public, within ten (10) days from such registration.

Content of the credit agreement.

22. (1) The credit agreement shall be drawn up in writing or on a durable medium, and shall specify as much as possible, in a plain and intelligible language that can be easily understood by the consumer, the following:

(a) the information listed under regulation 17(2)(b), (c), (e), and (g) to (j);

(b) the identities and geographical addresses of the contracting parties;

(c) the annual percentage rate of charge and the total amount payable by the consumer calculated at the time the credit agreement is concluded:

Provided that all the assumptions used in calculating that rate shall be mentioned;

(d) the right of the consumer to receive, on request and free of charge, at any time throughout the duration of the credit, a statement of account in the form of an amortisation table:

Provided that the amortisation table shall:

(i) indicate the payments owing and the periods and conditions relating to the payment of such amounts;

(ii) contain a breakdown of each repayment showing the interest calculated on the basis of the borrowing rate and where applicable any additional costs;

(iii) where the interest is not fixed or the additional costs may be changed under the credit agreement, it shall indicate clearly and concisely that the data contained in the table will remain valid only until such time as the borrowing rate or the additional costs are changed in accordance with the credit agreement;

(e) if charges and interest are to be paid, a statement showing the periods and conditions for the payment of the interest and of any associated recurrent and non-recurrent charges;

(f) the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement and the arrangement for its adjustment and, where applicable, any charges payable for default;

(g) the procedure to be followed in exercising the right of termination of the credit agreement;

(h) information concerning the right resulting under regulation 23 and the conditions attached to that right;

(i) whether or not there is an out-of-court procedure for the consumer to make a complaint, the redress mechanism available and the methods for having access to it;

(j) where applicable, other contractual terms and conditions.

(2) (a) In the event of any changes in the borrowing rate, the creditor shall inform the consumer of any such change, on paper or another durable medium, before the change takes effect:

Provided that such information shall at least state:

(i) the amount of the payments to be made after the new borrowing rate takes effect; and

(ii) in cases where the number or frequency of the payments changes, provide the consumer with particulars of such payment changes.

(b) Without prejudice to paragraph (a), the parties to the credit agreement may agree in the credit agreement that:

(i) where the change in the borrowing rate is correlated with a change in a reference rate, the information referred to in paragraph (a) is to be given to the consumer periodically;

(ii) the new reference rate is to be made publicly available by appropriate means, which may include a publication on the creditor's website or a public advert; and

(iii) the information concerning the new reference rate is to be kept available in the premises of the creditor and communicated personally to the consumer together with the amount of new periodic instalments.

(c) Where changes in the borrowing rate are determined by way of auction on the capital markets and it is therefore impossible for the creditor to inform the consumer of any change before the change takes effect, the creditor shall, in good time before the auction, inform the consumer on paper or on another durable medium of the upcoming procedure and provide an indication of how the borrowing rate could be affected.

(3) Where applicable, the creditor shall make available to the consumer, free of charge and at any time during the duration of the equity release financial product, a statement of account in the form of an amortisation table.

(4) Every public deed of loan to which these regulations apply shall make a direct reference to the equity release financial product entered into and between the creditor and the consumer, the date thereof and shall state expressly that the consumer has received, read, understood and agreed to all the terms set out in the credit agreement, after due explanation by the creditor as may be amended from time to time according to the terms thereof.

Early repayment.

23. (1) A consumer shall have the right to discharge his obligations under an equity release financial product, in full or in part,

before the agreed termination.

(2) If the consumer pays the credit before the agreed termination:

(a) the consumer shall be entitled to a reduction of the total cost of the credit, such reduction consisting of the interest and the costs for the remaining duration of the contract; and

(b) the creditor shall be entitled to a fair and objective compensation, where justified, for possible costs directly linked to the early repayment of the credit in accordance with the credit agreement and the information provided in regulation 22(1)(g) and (h), so long as the early repayment falls within a period for which the borrowing rate is fixed:

Provided that said compensation shall not exceed the financial loss of the creditor and that no sanction is imposed on the consumer:

Provided further that in calculating the level of compensation, consideration shall also be given to the impact of early repayment on administrative costs irrespective whether the borrowing rate is fixed or variable.

(3) In determining the compensation for possible costs directly linked to early repayment of credit referred to in sub-regulation (2)(b), a creditor shall apply the same calculations to all consumers irrespective of the reason why early repayment was effected.

(4) Without prejudice to sub-regulations (2) and (3), the competent authority may provide that the exercise of the right referred to in sub-regulation (1) is to be subject to certain conditions, which may include time limitations on the exercise of the right, a different treatment depending on the type of the borrowing rate or on the moment the consumer exercises the right, or restrictions with regard to the circumstances under which the right may be exercised.

(5) Where a consumer seeks to discharge his obligations under a credit agreement before the agreed termination of the credit agreement, the creditor shall provide the consumer without delay after receipt of the request, on paper or on another durable medium, with the information necessary to consider that option.

(6) The information referred to in sub-regulation (5) shall at least quantify the implications for the consumer of discharging his obligations before the agreed termination of the credit agreement and clearly set out any assumptions used:

Provided that any assumptions used shall be reasonable and justifiable.

(7) Termination of any equity release financial product due to the death of the consumer or to his/her move to long-term care shall, in no case, constitute an event of early termination and, consequently, shall not be subject to any early repayment charges.

Assignment of rights and set-off.

24. (1) Where the rights of the creditor under a credit agreement are, or the agreement itself is, assigned to a third party, the consumer shall be entitled to raise against that assignee any defence available to him against the original creditor, including the right to set-off:

Cap. 16.

Provided that set-off may only be raised in accordance with the relevant provisions of articles 1196 to 1204 of the Civil Code, which shall apply irrespective of anything to the contrary contained in a credit agreement.

(2) The consumer shall be informed of the assignment referred to in sub-regulation (1) except where the original creditor, by agreement with the assignee, continues to service the credit vis-à- vis the consumer.

Variable rate credits.

25. Where the credit agreement is a variable rate credit:

(a) any indexes or reference rates used to calculate the borrowing rate shall be clear, accessible, objective and verifiable by the parties to the credit agreement and the competent authority; and

(b) historical records of indexes for calculating the borrowing rates shall be maintained either by the providers of these indexes or by the creditors:

Provided that the borrowing rate/s shall be capped for the whole duration of the equity release financial product.

PART XII
Obligations of the Consumer

Obligation to disclose correct information.

26. (1) Consumers shall provide creditors with complete and correct information on their financial situation and personal circumstances in the context of the application process for an equity release financial product.

(2) The information referred to in sub-regulation (1) shall be supported, when necessary, by documentary evidence from independently verifiable sources.

(3) In order for the creditor to make a decision on whether or not to grant the credit under the equity release financial product, the creditor shall at the pre-contractual phase, clearly specify the information, including independently verifiable evidence where necessary, that the consumer needs to provide.

(4) Creditors shall state the timing by which consumers are required to provide such information.

(5) This regulation is without prejudice to the application of the Data Protection legislation.

PART XIII
Miscellaneous

Advertising.

27. (1) Without prejudice to Directive 2005/29/EC, any advertising and marketing communications concerning equity release financial products shall be fair, clear and not misleading. In particular, wording that may create false expectations for a consumer regarding the availability or the cost of an equity release financial product shall be prohibited.

Cap. 378.

(2) Without prejudice to the provisions relating to unfair commercial practices under the Consumer Affairs Act, any advertising concerning equity release financial products which indicates an interest rate or any figures relating to the cost of the credit to the consumer, shall include the standard information in accordance with this regulation.

(3) The standard information referred to in sub-regulation (2) shall specify in a clear, concise and prominent way:

(a) the identity of the creditor;

(b) that the product advertised is an equity release financial product and that the credit agreement will be secured by a hypothec on residential immovable property or on a right related to residential immovable property;

(c) the borrowing rate, indicating whether this is fixed or variable or a combination of both:

Provided that the borrowing rate/s shall be fixed or capped for the whole duration of the equity release financial product;

(d) particulars of any charges included in the total cost of credit to the consumer;

(e) the total amount of credit;

(f) the APRC which shall be included in the advertisement at least as prominently as any interest rate;

(g) where applicable, the duration of the credit agreement;

(h) where applicable, the total amount payable by the consumer;

(i) where applicable, the amount of the instalments and the amount of each repayment of interest;

(j) a warning concerning the risk of losing the immovable property in the event of non-observance of the commitments linked to the credit agreement and, in any case, on termination of the credit agreement; and

(k) a warning that compounding of interest could materially reduce the value of the estate of the consumer.

(4) The information listed in sub-regulation (3) other than that listed in paragraphs (a) and (b) of sub-regulation (3), shall be specified by means of a representative example and shall adhere to that representative example throughout.

(5) (a) Any advertising concerning equity release financial products which includes an interest rate or any figures relating to the cost of the credit to the consumer, shall include a clear and concise statement in respect of any obligation to enter into a contract in respect of an ancillary service relating to the equity release financial product, in particular an insurance service, where:

(i) the conclusion of that service is compulsory in order to obtain the credit or to obtain it on the terms and conditions advertised; and

(ii) the cost of that service cannot be determined in advance.

(b) The obligation referred to in paragraph (a) shall be advertised in a prominent way together with the APRC.

(6) The information referred to in sub-regulations (3) and (5) shall be easily legible or clearly audible as appropriate, depending on the medium used for advertising and marketing.

(7) The competent authority may require the inclusion of a concise and proportionate warning concerning specific risks associated with credit agreements.

(8) This regulation shall be without prejudice to Directive 2005/29/EC.

Tying and bundling practices.

28. (1) Whilst bundling practices shall be allowed, tying practices shall be prohibited.

(2) Creditors may require the consumer to hold a relevant insurance policy related to the credit agreement:

Provided that a creditor shall accept insurance policies from a supplier different to his preferred supplier where such policy

has a level of guarantee equivalent to the one the creditor has proposed.

Annual percentage rate of charge.

29. (1) The annual percentage rate of charge shall be calculated in accordance with the mathematical formula set out in the Second Schedule.

(2) The costs of opening and maintaining a specific account, of using a means of payment for both transactions and drawdowns on that account and of other costs relating to payment transactions shall be included in the total cost of credit to the consumer whenever the opening or maintaining of an account is obligatory in order to obtain the credit or to obtain it on the terms and conditions marketed.

(3) The calculation of the annual percentage rate of charge shall be based on the assumption that the credit agreement is to remain valid for the estimated period and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement.

(4) In the case of credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, in the charges contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge shall be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the level set at the conclusion of the contract.

(5) For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period of at least five (5) years, at the end of which a negotiation on the borrowing rate takes place to agree on a new fixed rate for a further material period, the calculation of the additional, illustrative annual percentage rate of charge disclosed in the Information Document shall cover only the initial fixed rate period and shall be based on the assumption that, at the end of the fixed borrowing rate period, the capital outstanding is repaid.

(6) Where the credit agreement allows for variations in the borrowing rate, creditors shall inform consumers of the possible impacts of variations on the amounts payable and on the annual percentage rate of charge at least by means of the Information Document, by providing the consumer with an additional annual percentage rate of charge which illustrates the possible risks linked to a significant increase in the borrowing rate:

Provided that this sub-regulation shall not apply to credit agreements where the borrowing rate is fixed for an initial period of at least five (5) years, at the end of which a negotiation on the borrowing rate takes place in order to agree on a new fixed rate for a further material period, for which an additional, illustrative annual percentage rate of charge is provided for in the Information Document.

(7) Where applicable, the additional assumptions set out in the Second Schedule shall be used in calculating the annual percentage rate of charge.

Suspected breaches.

30. (1) Where the competent authority has reasonable grounds for suspecting that a person has contravened or has failed to comply with any provision of these regulations and any rules issued thereunder, it may by notice in writing require that person or any other person:

(a) to provide at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as it may reasonably require for the purpose of investigating the suspected contravention or failure to comply;

(b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description as may be specified which it may reasonably require for that purpose;

(c) to attend at such place and time as may be specified in the notice, and answer questions relevant for determining whether such a contravention or failure to comply has occurred.

(2) The competent authority or its duly authorised officer, employee, agent or inspector, may take copies of or extracts from any documents produced under this regulation.

(3) Any officer, employee, agent or inspector of the competent authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served in terms of sub-regulation (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of sub-regulation (1) or exercising the powers conferred by sub-regulation (2).

(4) No person shall without lawful excuse fail to comply with a requirement imposed on him under this regulation or intentionally obstruct a person in the exercise of the rights conferred by sub- regulation (3).

(5) A statement made by a person in compliance with a requirement imposed by virtue of this regulation may be used as evidence against him.

Obstruction.

31. No person who knows or suspects that an investigation is being or is likely to be carried out in terms of these regulations may falsify, conceal, destroy or otherwise dispose of, or cause or permit the

falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

Duties of officers.

32. Every officer of a creditor shall take all reasonable steps:

(a) to secure compliance by the creditor with all of the provisions of these regulations and any rules issued thereunder; and

(b) to ensure that no incorrect information is provided to the competent authority either wilfully or as the result of gross negligence.

Administrative fines.

33. (1) Without prejudice to the provisions of regulation 34, the competent authority may impose an administrative fine, issue such order or directive, or decision or take such measure as may be deemed appropriate in terms of these regulations, upon any person who contravenes or fails to comply with any of the provisions of these regulations.

(2) Any person guilty of an offence under the provisions of these regulations shall be liable on conviction to a fine (*multa*) not exceeding four hundred and sixty-five thousand eight hundred and seventy-five euro (€465,875) or to a term of imprisonment not exceeding four (4) years, or to both such fine and imprisonment.

Powers of the competent authority to impose administrative fines.

34. (1) Without prejudice to the provisions of regulation 33, where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of these regulations, or such person has failed to comply with a directive issued by the competent authority under these regulations, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply as the case may be.

(2) Where the competent authority decides to impose an administrative fine, it shall notify the person on whom the fine is being imposed by means of a notice in writing.

(3) Where the person upon whom the notice referred to in sub- regulation (2) is served:

(a) fails to pay to the competent authority the amount of the administrative fine within a period of thirty (30) days of the service of the notice, and fails to appeal from the decision of the competent authority to the Financial Services Tribunal; or

(b) appeals to the Financial Services Tribunal and

fails within a period of fifteen (15) days from the decision of the said Tribunal to pay the administrative fine as confirmed or as reduced by that Tribunal, then, in every case, the amount of the administrative fine, as originally imposed or as reduced, as the case may be, shall be due to the competent authority as a civil debt, and the provisions of sub-regulation (4) shall apply.

(4) A notice as is referred to in sub-regulation (2), or the decision of the Financial Services Tribunal, as the case may be, shall upon the service by judicial act of a copy thereof on the person indicated in the notice, constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

Cap. 12.

Right to appeal from a decision or measure of the competent authority.

35. Any person who feels aggrieved by a decision and, or measure taken by the competent authority pursuant to these regulations, may appeal against the decision and, or measure to the Financial Services Tribunal within such period and under such conditions as established under the Malta Financial Services Authority Act.

Cap. 330.

Publication of administrative fines.

36. (1) The competent authority may publish, on its official website and, or in any other media as it considers appropriate, any administrative fines imposed under the provisions of these regulations. Such publications shall include information on the type and nature of the breach and the identity of the person on whom the administrative fine is imposed, without undue delay after that person is informed of those penalties:

Provided that in cases where an appeal has been filed by the person on whom such administrative fine or fines have been imposed, the competent authority shall, without undue delay, also publish on its official website and in any other media as it considers appropriate, information on the status of the appeal and the outcome thereof.

(2) Information published in terms of this regulation shall remain on the official website of the competent authority for a period of not less than five (5) years. Personal data shall be retained on the official website of the competent authority and in any other media it considers appropriate only for the period necessary, in accordance with the provisions of the Data Protection legislation.

Regulations to prevail.

37. (1) The provisions of these regulations cannot be circumvented in a way which could lead to consumers losing the protection granted by these regulations as a result of the way in which equity release financial products are formulated, in particular by integrating credit agreements into agreements, the character or purpose of which would make it possible to avoid the application of those measures.

(2) Any waiver by the consumer of any of the rights granted to him by these regulations shall be null and void.

(3) Notwithstanding any provision in the credit agreement to the effect that the applicable law to the credit agreement shall be the law of a country other than Malta, the protection granted by these regulations shall continue to apply where the credit agreement has a close link with Malta.

Complaints.

38. (1) Creditors shall put in place and apply adequate and effective complaint resolution procedures for the settlement of complaints of consumers concerning the rights and obligations arising from the provisions of these regulations.

Creditors shall make such complaint resolution procedures available in English or, upon the request of the consumer, in Maltese or in any other language agreed upon between the creditor and the consumer.

(2) Creditors shall make every possible effort to reply, on paper or on another durable medium, to the consumers' complaints. Such a reply shall address all points raised, within an adequate time-frame and at the latest within fifteen (15) business days of receipt of the complaint.

(3) The creditor shall inform the consumer about the services offered by the Office of the Arbiter for Financial Services established by the Arbiter for Financial Services Act, which is competent to deal with disputes concerning the rights and obligations arising under these regulations.

Cap. 555.

(4) The information referred to in sub-regulation (3) shall be mentioned in a clear, comprehensive and easily accessible way on the website of the creditor, where one exists, at the branch, and in the general terms and conditions of the contract between the creditor and the consumer. The information referred to in sub-regulation (3) shall also specify how the consumer can access further information on the Office of the Arbiter and on the conditions for using such services.

Office of the Arbiter for Financial Services.

39. Without prejudice to regulation 38, a consumer may resort to the Office of the Arbiter for Financial Services for the settlement of a dispute with a creditor concerning the rights and obligations arising under these regulations.

Transitional provisions.

40. (1) These regulations and any rules issued thereunder shall apply to equity release financial products offered by creditors after the coming into force of these regulations.

(2) Creditors which, on the coming into force of these regulations, are performing activities regulated by these regulations, shall, within one (1) year from the date of coming into force of these regulations, comply with these regulations and any rules issued thereunder.

FIRST SCHEDULE
(Regulation 15(1) and (2))

INFORMATION DOCUMENT
PART A

(Introductory text)

This document was produced for [name of consumer] on [current date].

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.

The information below remains valid until [validity date], (where applicable) apart from the interest rate and other costs. After that date, it may change in line with market conditions.

This document does not constitute an obligation for [name of creditor] to grant you a loan.

1. Lender

[Name]

[Telephone number]

[Geographical address]

(Optional) [E-mail address]

(Optional) [Fax number]

(Optional) [Web address]

(Optional) [Contact person/point]

(Where applicable information as to whether advisory services are being provided:) [(We recommend, having assessed your needs and circumstances, that you take out this equity release financial product./We are not recommending a particular equity release financial product for you. However, based on your answers to some questions, we are giving you information about this equity release financial product so that you can make your own choice.)]

We recommend that you seek independent professional advice in relation to this equity release financial product from a lawyer or accountant duly authorized to practice in Malta.

2. Main features of the equity release financial product

Amount of the loan to be granted: [value]

Duration of the loan: [duration] [Type of loan]

[Type of applicable interest rate]

(Where applicable) The total amount to be reimbursed will be the amount of the loan together with interest at the rate indicated herein which will be compounded on an annual basis until termination of the equity release financial product. Consequently, the total amount to be reimbursed will change if the interest rate changes.

(Where applicable) [This/Part of this] is an interest-only loan. You will still owe [insert amount of loan on an interest- only basis] at the end of the term.

(Where applicable) Value of the property assumed to prepare this information sheet: [insert amount]

(Where applicable) Maximum available loan amount relative to the value of the property [insert ratio] or Minimum value of the property required to borrow the illustrated amount [insert amount]

3. Interest rate and other costs

The annual percentage rate of charge (APRC) is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers.

The APRC applicable to your loan is [APRC].

It comprises:

Interest rate [value in percentage or, where applicable, indication of a reference rate and percentage value of creditor's spread]

[Other components of the APRC]

Costs to be paid on a one-off basis

(Where applicable) You will need to pay a fee to register the hypothec. [Insert amount of fee where known or basis for calculation.]

Costs to be paid regularly

(Where applicable) This APRC is calculated using assumptions regarding the interest rate.

(Where applicable) Because [part of] your loan is a variable

interest rate loan, the actual APRC could be different from this APRC if the interest rate for your loan changes. For example, if the interest rate rose to [scenario as described in Part B], the APRC could increase to [insert illustrative APRC corresponding to the scenario].

(Where applicable) Please note that this APRC is calculated on the basis that the interest rate remains at the level fixed for the initial period throughout the duration of the credit agreement.

(Where applicable) The following costs are not known to the lender and are therefore not included in the APRC: [Costs]

Please make sure that you are aware of all other taxes and costs associated with your loan.

(Where applicable) The cap on the borrowing rate is _____.

4. Frequency and number of payments (where applicable)

Repayment frequency: [frequency] Number of payments: [number]

5. Amount of each instalment (where applicable)

[Amount]

(Where applicable) Because [this/part of this] is an interest-only loan the [insert amount of loan on an interest-only basis] you will owe at the end of the term will be payable from the sale of your residential property.

(Where applicable) The interest rate on [part of] this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to [scenario as described in Part B] your payments could increase to [insert instalment amount corresponding to the scenario].

(Where applicable) [Details on tied savings products, deferred-interest loans]

6. (Where applicable) Illustrative repayment table

This table shows the amount to be paid every [frequency].

The instalments (column [relevant no.]) are the sum of interest to be paid (column [relevant no.]), and, where applicable, other costs (column [relevant no.]). (Where applicable) The costs in the other costs column relate to [list of costs].

[Table]

7. Additional obligations

The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document.

[Obligations]

(Where applicable) Please note that the lending conditions described in this document (including the interest rate) may change if these obligations are not complied with.

(Where applicable) Please note the possible consequences of terminating at a later stage any of the ancillary services relating to the loan:

[Consequences]

8. Early repayment

You have the possibility to repay this loan early, either fully or partially. (Where applicable) [Conditions]

(Where applicable) Exit charge: [insert amount or, where not possible, the method of calculation]

(Where applicable) Should you decide to repay this loan early, please contact us to ascertain the exact level of the exit charge at that moment.

Termination of any equity release financial product due to your death or to your move to long-term care shall, in no case, constitute an event of early termination and, consequently, shall not to be subject to any early repayment charges.

9. Flexible features

(Where applicable) Additional features: [insert explanation of additional features listed in Part B and, optionally, any other features offered by the lender as part of the equity release financial product not referred to in previous sections].

10. Other rights of the borrower

(Where applicable) You have [length of reflection period] after [point in time when the reflection period begins] to reflect before committing yourself to taking out this equity release financial product. (Where applicable) Once you have received the credit agreement from the lender, you may not accept it before the end of [length of reflection period].

(Where applicable) For a period of [length of withdrawal period] after [point in time when the withdrawal period begins]

you may exercise your right to cancel the agreement. [Conditions] [Insert procedure]

(Where applicable) You may lose your right to cancel the agreement if, during that period, you buy or sell a property connected to this credit agreement.

(Where applicable) Should you decide to exercise your right of withdrawal [from the credit agreement], please verify whether you will remain bound by your other obligations relating to the loan [including the ancillary services relating to the loan] [referred to in Section 8].

You shall have the right to move to a main residence different from the main residence securing the equity release financial product without incurring any financial penalty by the creditor: Provided that the new main residence to be granted as security shall be of the same value or more: Provided further that you shall bear any costs related to the constitution of security over the new main residence and cancellation of the security over the old main residence.

11. Complaints

If you have a complaint please contact [insert internal contact point and source of information on procedure].

(Where applicable) Maximum time for handling the complaint [period of time]

(Where applicable) [If we do not resolve the complaint to your satisfaction internally,] you can also contact: [insert name of external body for out-of-court complaints and redress] (Where applicable) or you can contact FIN-NET for details of the equivalent body in your own country.

12. Non-compliance with the commitments linked to the loan: consequences for the borrower

[Types of non-compliance]

[Financial and/or legal consequences]

Should you encounter difficulties in making your [frequency] payments, please contact us straight away to explore possible solutions.

(Where applicable) As a last resort, your home may be repossessed if you do not keep up with payments.

13. Additional information

(Where applicable) [Indication of the law applicable to the credit contract].

Information and contractual terms will be supplied in [language]. With your consent, we intend to communicate in [language/s] during the duration of the equity release financial product.

[Insert statement on right to be provided with or offered, as applicable, a draft credit agreement]

14. Supervisor

This lender is supervised by [Name(s), and web address(es) of supervisory authority/ies]

PART B

Instructions to complete the Information Document

Section "Introductory Text"

(1) The validity date shall be properly highlighted. For the purpose of this section, the 'validity date' means the length of time the information, e.g. the borrowing rate, contained in the Information Document will remain unchanged and will apply should the creditor decide to grant the credit within this period of time. Where the determination of the applicable borrowing rate and other costs depends on the results of the selling of underlying bonds, the eventual borrowing rate and other costs may be different from those stated. In those circumstances only, it shall be stipulated that the validity date does not apply to the borrowing rate and other costs by adding the words: 'apart from the interest rate and other costs'.

Section "1. Lender"

(1) Name, telephone number, and geographical address of the creditor shall refer to the contact information that the consumer may use for future correspondence.

(2) Information on the e-mail address, fax number, web address and contact person/point is optional.

(3) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the creditor shall indicate, where applicable, the name and geographical address of its representative in the Member State of residence of the consumer. Indication of the telephone number, e-mail address and web address of the representative of the credit provider is optional.

(4) The creditor shall inform the consumer whether advisory

services are being provided and on what basis using the wording in Part A.

Section "2. Main features of the loan"

(1) This section shall clearly explain the main characteristics of the credit, including the value and the potential risks associated with the borrowing rate, including the ones referred to in sub-paragraph (5), and the risks associated with changes in values of immovable property.

(2) The creditor shall clearly state that (a) an equity release financial product is a special type of loan which is usually designed to run for the rest of the consumer's life, and which means that the consumer borrows money that is secured on his/her home to give the consumer a lump sum/or a regular income; (b) the amount the consumer owes to the creditor is usually paid back from the proceeds of the sale of his/her home after death or when the consumer moves into long-term care. If the consumer is borrowing with someone else this would be after the death or move into long-term care of the last borrower. Any money left over would be paid to the consumer's heirs: Provided that the creditor cannot commence proceedings, judicial or otherwise, for the sale or other transfer of the property securing the equity release financial product for a period of at least thirty six (36) months from the death of the consumer or his/her move to long-term care: Provided further that, in the case of a move into long-term care, the creditor and the consumer may agree to retain the equity release financial product even after the lapse of such thirty six month period, for so long as such agreement subsists, until the death of the consumer: Provided further that in any case, the consumer or the heir/s of the deceased consumer, as applicable, shall be free to repay the equity release financial product in full against the release of the property securing the equity release financial product; and (c) if the consumer decides that he/she simply does not want the equity release financial product any more, the consumer can repay the amount he/she owes to the creditor at any time, but, in such case, the creditor may make an early repayment charge. Section 9 of this Information Document indicates if any early repayment charges apply to this equity release financial product.

(3) The type of credit shall be clearly indicated. The description of the type of credit shall clearly indicate how the capital and the interest shall be reimbursed (i.e. the amortisation structure), specifying clearly whether the credit agreement is on interest-only basis.

(4) Where all or part of the credit is an interest-only credit, a statement clearly indicating that fact shall be inserted prominently at the end of this section using the wording in Part

A.

(5) This section shall explain whether the borrowing rate is fixed or variable and, where applicable, the periods during which it will remain fixed; the frequency of subsequent revisions and the existence of limits to the borrowing rate variability, such as caps or floors: Provided that the borrowing rate shall be fixed or capped for the whole duration of the equity release financial product.

The formula used to revise the borrowing rate and its different components (e.g. reference rate, interest rate spread) shall be explained. The creditor shall indicate, e.g. by means of a web address, where further information on the indices or rates used in the formula can be found, e.g. Euribor or central bank reference rate.

(6) If different borrowing rates apply in different circumstances, the information shall be provided on all applicable rates.

(7) The 'total amount to be reimbursed' corresponds to the total amount payable by the consumer. It shall be shown as the sum of the credit amount and the total cost of the credit to the consumer. Where the borrowing rate is not fixed for the duration of the contract, it shall be highlighted that this amount is illustrative and may vary in particular in relation with the variation in the borrowing rate.

(8) The creditor shall draw the consumer's attention to the fact that the credit is secured by a hypothec on the immovable property. Where applicable the creditor shall indicate the assumed value of the immovable property used for the purpose of preparing this information document.

(9) The creditor shall indicate, where applicable, either:

(a) 'maximum available loan amount relative to the value of the property', indicating the loan-to-value ratio. This ratio is to be accompanied by an example in absolute terms of the maximum amount that can be borrowed for a given property value; or

(b) the 'minimum value of the property required by the creditor to lend the illustrated amount'.

(10) Where credits are multi-part credits (e.g. concurrently part fixed rate, part variable rate), this shall be reflected in the indication of the type of credit and the required information shall be given for each part of the credit.

(11) The creditor shall also draw the consumer's attention to the

fact that the term of the equity release financial product is estimated at [insert number of years] years, but that the term of the equity release financial product is not fixed and could be longer or shorter than [insert number of years] years. If the consumer is still living in his/her home at the end of [insert number of years] years, the equity release financial product will continue to run.

Section "3. Interest rate and other costs"

(1) The reference to 'interest rate' corresponds to the borrowing rate or rates.

(2) The borrowing rate shall be mentioned as a percentage value. Where the borrowing rate is variable and based on a reference rate the creditor may indicate the borrowing rate by stating a reference rate and a percentage value of creditor's spread. The creditor shall however indicate the value of the reference rate valid on the day of issuing the Information Document: Provided that the borrowing rate shall be fixed or capped for the whole duration of the equity release financial product.

Where the borrowing rate is variable the information shall include: (a) the assumptions used to calculate the APRC; (b) where relevant, the applicable caps and floors and (c) a warning that the variability could affect the actual level of the APRC. The warning shall be accompanied by an illustrative example on the APRC. Since there is a cap on the borrowing rate, the example shall assume that the borrowing rate rises at the earliest possible opportunity to the highest level foreseen in the credit agreement. Such requirement shall not apply to credit agreements where the borrowing rate is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the creditor and the consumer. For credit agreements where the borrowing rate is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the creditor and the consumer, the information shall include a warning that the APRC is calculated on the basis of the borrowing rate for the initial period. The warning shall be accompanied by an additional, illustrative APRC calculated in accordance with regulation 29(4). Where credits are multi-part credits (e.g. concurrently part fixed rate, part variable rate), the information shall be given for each part of the credit.

(3) Information on the compounding of interest shall be provided.

(4) In the section on 'other components of the APRC' all the other costs contained in the APRC shall be listed, including

one-off costs such as administration fees, and regular costs, such as annual administration fees. The creditor shall list each of the costs by category (costs to be paid on a one-off basis, costs to be paid regularly and included in the instalments, costs to be paid regularly but not included in the instalments), indicating their amount, to whom they are to be paid and when. This does not have to include costs incurred for breaches of contractual obligations. Where the amount is not known, the creditor shall provide an indication of the amount if possible, or if not possible, how the amount will be calculated and specify that the amount provided is indicative only. Where certain costs are not included in the APRC because they are unknown to the creditor, this shall be highlighted.

Where the consumer has informed the creditor of one or more components of his preferred credit, such as the total amount of credit, the creditor shall, where possible, use those components; if a credit agreement provides different ways of drawdown with different charges or borrowing rates and the creditor uses the assumptions set out in Part II of the Second Schedule, it shall indicate that other drawdown mechanisms for this type of credit agreement may result in a higher APRC. Where the conditions for drawdown are used for calculating the APRC, the creditor shall highlight the charges associated with other drawdown mechanisms that are not necessarily the ones used in calculating the APRC.

(5) Where a fee is payable for registration of the hypothec that shall be disclosed in this section with the amount, where known, or where this is not possible the basis for determining the amount. Where the fees are known and included in the APRC the existence and amount of the fee shall be listed under 'Costs to be paid on a one-off basis'. Where the fees are not known to the creditor and therefore not included in the APRC the existence of the fee shall be clearly mentioned in the list of costs which are not known to the creditor. In either case the standardised wording in Part A shall be used under the appropriate heading.

Section "4. Frequency and number of payments"

(1) Where payments are to be made on a regular basis, the frequency of payments shall be indicated (e.g. monthly). Where the frequency of payments will be irregular, this shall be clearly explained to the consumer.

(2) The number of payments indicated shall cover the whole duration of the credit.

Section "5. Amount of each instalment"

(1) Where the amount of the instalments may change during the life of the credit, the creditor shall specify the period during which that initial instalment amount will remain unchanged and when and how frequently afterwards it will change.

(2) Where all or part of the credit is an interest-only credit, a statement clearly indicating that fact, shall be inserted prominently at the end of this section using the wording in Part A.

If there is a requirement for the consumer to take out a tied savings product as a condition for being granted an interest-only credit secured by a hypothec, the amount and frequency of any payments for this product shall be provided.

(3) Where the borrowing rate is variable the information shall include a statement indicating that fact, using the wording in Part A and an illustration of a maximum instalment amount. Since there is a cap, the illustration shall show the amount of the instalments if the borrowing rate rises to the level of the cap. The requirement to provide an illustrative example shall not apply to credit agreements where the borrowing rate is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the creditor and the consumer. Where credits are multi-part credits (e.g. concurrently part fixed rate, part variable rate), the information shall be given for each part of the credit, and in total: Provided that the borrowing rate/s shall be fixed or capped for the whole duration of the equity release financial product.

(4) Where the credit is a deferred-interest credit under which interest due is not fully repaid by the instalments and is added to the total amount of credit outstanding, there shall be an explanation of: how and when deferred interest is added to the credit as a cash amount; and what the implications are for the consumer in terms of the remaining debt.

Section "6. Illustrative repayment table"

(1) This section shall be included where the credit is a deferred interest credit under which interest due is not fully repaid by the instalments and is added to the total amount of credit outstanding or where the borrowing rate is fixed for the duration of the credit agreement.

Where the consumer has the right to receive a revised amortisation table, this shall be indicated along with the conditions under which the consumer has that right.

(2) Where the borrowing rate may vary during the lifetime of the credit, the creditor shall indicate the period during which

that initial borrowing rate will remain unchanged: Provided that the borrowing rate shall be fixed or capped for the whole duration of the equity release financial product.

(3) The table to be included in this section shall contain the following columns:

"repayment schedule" (e.g. month 1, month 2, month 3), "amount of the instalment",

"interest to be paid per instalment" and "other costs included in the instalment" (where relevant).

(4) For the first repayment year the information shall be given for each instalment and a subtotal shall be indicated for each of the columns at the end of that first year. For the following years, the detail can be provided on an annual basis. An overall total row shall be added at the end of the table and shall provide the total amounts for each column. The total cost of the credit paid by the consumer (i.e. the overall sum of the 'amount of the instalment' column) shall be clearly highlighted and presented as such.

(5) Where the borrowing rate is subject to revision and the amount of the instalment after each revision is unknown, the creditor may indicate in the amortisation table the same instalment amount for the whole credit duration. In such a case, the creditor shall draw that fact to the attention of the consumer by visually differentiating the amounts which are known from the hypothetical ones (e.g. using a different font, borders or shading). In addition, a clearly legible text shall explain for which periods the amounts represented in the table may vary and why.

Section "7. Additional obligations"

(1) The creditor shall refer in this section to obligations such as the obligation to insure the immovable property, to have a salary or pension paid into an account with the creditor or to buy any other product or service. For each obligation, the creditor shall specify towards whom and by when the obligation needs to be fulfilled.

(2) The creditor shall specify the duration of the obligation, e.g. until the end of the credit agreement. The creditor shall specify for each obligation any costs to be paid by the consumer, which are not included in the APRC.

(3) The creditor shall state whether it is compulsory for the consumer to hold any ancillary services to obtain the equity release financial product on the stated terms, and if so whether the consumer is obliged to purchase them from the creditor's

preferred supplier or whether they may be purchased from a provider of consumer's choice. Where such possibility is conditional on the ancillary services meeting certain minimum characteristics, such characteristics shall be described in this section.

Where the equity release financial product is bundled with other products the creditor shall state the key features of those other products and clearly state whether the consumer has a right to terminate the equity release financial product or the bundled products separately, the conditions for and implications of doing so, and, where applicable, of the possible consequences of terminating the ancillary services required in connection with the equity release financial product.

Section "8. Early repayment"

(1) The creditor shall indicate under what conditions the consumer can repay the credit early, either fully or partially.

(2) In the section on exit charges the creditor shall draw the consumer's attention to any exit charge or other costs payable on early repayment in order to compensate the creditor and where possible indicate their amount. In cases where the amount of compensation would depend on different factors, such as the amount repaid or the prevailing interest rate at the moment of the early repayment, the creditor shall indicate how the compensation will be calculated and provide the maximum amount that the charge might be, or where this is not possible, an illustrative example in order to demonstrate to the consumer the level of compensation under different possible scenarios.

Section "9. Flexible features"

(1) The creditor shall explain the possibility to and conditions for transferring the credit to another immovable property.

(2) (Where appropriate) Additional features: Where the product contains any of the features listed in paragraph 5, this section must list these features and provide a brief explanation of: the circumstances in which the consumer can use the feature; any conditions attached to the feature; if the feature being part of the credit secured by a hypothec means that the consumer loses any statutory or other protections usually associated with the feature; and the firm providing the feature (if not the creditor).

(3) If the feature contains any additional credit, then this section must explain to the consumer: the total amount of credit (including the credit secured by the hypothec); whether the

additional credit is secured or not; the relevant borrowing rates; and whether it is regulated or not.

(4) If the feature involves a savings vehicle, the relevant interest rate must be explained.

(5) The possible additional features are: Overpayments/ Underpayments' [paying more or less than the instalment ordinarily required by the amortisation structure]; 'Payment holidays' [periods where the consumer is not required to make payments]; 'Additional borrowing available without further approval'; 'Additional secured or unsecured borrowing' [in accordance with paragraph 3 above]; 'Credit card'; 'Linked current account'; and 'Linked savings account'.

(6) The creditor may include any other features offered by the creditor as part of the equity release financial product not mentioned in previous sections.

Section "10. Other rights of the borrower"

(1) The creditor shall clarify the right(s) of e.g. withdrawal or reflection and where applicable other rights such as, portability (including subrogation) that exist, specify the conditions to which this/these right(s) is subject, the procedure that the consumer will need to follow in order to exercise this/ these right(s), inter alia, the address to which the notification of withdrawal shall be sent, and the corresponding fees (where applicable).

(2) Where a reflection period or right of withdrawal for the consumer applies this shall be clearly mentioned.

(3) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the consumer shall be informed of the existence or absence of a right of withdrawal.

Section "11. Complaints"

(1) This Section shall indicate the internal contact point [name of the relevant department] and a means of contacting them to complain [Geographical address] or [Telephone number] or [Contact person:] [contact details] and a link to the complaints procedure on the relevant page of a website or similar information source.

(2) It shall indicate the name of the relevant external body for out-of-court complaints and redress and where using the internal complaint procedure is a precondition for access to that body, indicate that fact using the wording in Part A.

(3) In the case of equity release financial products with a consumer who is resident in another Member State, the creditor

shall refer to the existence of FIN-NET (http:// ec.europa.eu/ internalmarket/fin-net/).

Section "12. Non-compliance with the commitments linked to the credit: consequences for the borrower"

(1) Where non-observance of any of the consumer's obligations linked to the credit may have financial or legal consequences for the consumer, the creditor shall describe in this section the different main cases (e.g. late payments/ default, failure to respect the obligations set out in Section 7 'Additional obligations') and indicate where further information could be obtained.

(2) For each of those cases, the creditor shall specify, in clear, easy comprehensible terms, the sanctions or consequences to which they may give rise. Reference to serious consequences shall be highlighted.

(3) Where the immovable property used to secure the credit may be returned or transferred to the creditor, if the consumer does not comply with the obligations, this section shall include a statement indicating that fact.

Section "13. Additional information"

(1) In the case of distance marketing, this section will include any clause stipulating the law applicable to the equity release financial product or the competent court.

(2) The creditor shall state the consumer's right to be provided with or offered, as applicable, a copy of the draft credit agreement at least once an offer binding on the creditor has been made.

Section "14. Supervisor"

(1) The relevant authority or authorities for the supervision of the pre-contractual stage of lending shall be indicated.

SECOND SCHEDULE
(Regulation 29)

Calculation of the annual percentage rate of charge.

I. Basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other.

The basic equation, which establishes the annual percentage rate of charge (APRC), equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, i.e.:

$$\sum_{k=1}^{m} C_k(1+X)^{-t_k} = \sum_{l=1}^{m'} D_l(1+X)^{-S_l}$$

where:

X is the APRC,

m is the number of the last drawdown,

k is the number of a drawdown, thus $1 \leq k \leq m$,

Ck is the amount of drawdown k,

tk is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus t1 = 0,

m' is the number of the last repayment or payment of charges,

l is the number of a repayment or payment of charges,

Dl is the amount of a repayment or payment of charges,

Sl is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks:

(a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.

(b) The starting date shall be that of the first drawdown.

(c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52

weeks or 12 equal months. An equal month is presumed to have 30.41666 days (i.e. 365/12) regardless of whether or not it is a leap year.

Where intervals between dates used in the calculations cannot be expressed as a whole number of weeks, months or years, the intervals shall be expressed as a whole number of one of those periods in combination with a number of days. Where using days:

(i) every day shall be counted, including weekends and holidays;

(ii) equal periods and then days shall be counted backwards to the date of the initial drawdown;

(iii) the length of the period of days shall be obtained excluding the first day and including the last day and shall be expressed in years by dividing this period by the number of days (365 or 366 days) of the complete year counted backwards from the last day to the same day of the previous year.

(d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one.

(e) The equation can be rewritten using a single sum and the concept of flows (Ak), which will be positive or negative, in other words either paid or received during periods 1 to n, expressed in years, i.e.:

$$S = \sum_{k=1}^{n} A_k (1 + X)^{-t_k},$$

S being the present balance of flows. If the aim is to maintain the equivalence of flows, the value will be zero.

II. Additional assumptions for the calculation of the annual percentage rate of charge:

(a) If a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall be deemed to be drawn down immediately and in full.

(b) If a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total

amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of credit agreement.

(c) If a credit agreement gives the consumer freedom of drawdown in general but imposes, among the different ways of drawdown, a limitation with regard to the amount and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the agreement and in accordance with those drawdown limits.

(d) If different borrowing rates and charges are offered for a limited period or amount, the highest borrowing rate and charges shall be deemed to be the borrowing rate and charges for the whole duration of the credit agreement.

(e) For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator or internal reference rate the calculation of the APRC shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculation of the APRC, based on the value of the agreed indicator or internal reference rate at that time, but is not less than the fixed borrowing rate.

(f) In estimating the term of the equity release financial product, the lender shall use an estimate of the life expectancy of the consumer that is reasonable and based on evidence. Where the consumer is borrowing with someone else, the term estimated should be based on the longest life expectancy. Where the term using this approach is less than fifteen years, the lender shall use a term of fifteen years.

(g) If the interval between the date of initial drawdown and the date of the first payment to be made by the consumer cannot be ascertained, it shall be assumed to be the shortest interval.

THIRD SCHEDULE
(Regulation 14)

1. The minimum knowledge and competence requirements for creditors' staff referred to in regulation 14 shall include:

(a) appropriate knowledge of equity release financial products falling within the scope of these regulations in accordance with regulation 3 and the ancillary services typically offered with them;

(b) appropriate knowledge of the laws related to the equity release financial product for consumers, in particular consumer protection;

(c) appropriate knowledge and understanding of the immovable property purchasing process;

(d) appropriate knowledge of security valuation;

(e) appropriate knowledge of organisation and functioning of land registers;

(f) appropriate knowledge of the immovable property market in Malta;

(g) appropriate knowledge of business ethics standards;

(h) appropriate level of financial and economic competency.

2. The competent authority shall determine the appropriate level of knowledge and competence on the basis of:

(a) professional qualifications, for example diplomas, degrees, training, competency tests; or

(b) professional experience, which may be defined as a minimum number of years working in areas related to the origination or distribution of credit products.