SUBSIDIARY LEGISLATION 378.10

CREDIT AGREEMENTS FOR CONSUMERS RELATING TO RESIDENTIAL IMMOVABLE PROPERTY REGULATIONS*

Substituted by: L.N. 259 of 2016.

1st January, 2012†

LEGAL NOTICE 415 of 2011, as amended by Legal Notices 266 of 2014, 259 of 2016, 86 of 2018 and 167 of 2022 and Acts XVI of 2019 and XLIV of 2021 and Legal Notice 18 of 2024.

PART I

Preliminary

Citation and purpose. *Substituted by: L.N. 259 of 2016. Amended by: L.N. 18 of 2024.*

1. (1) The title of these regulations is Credit Agreements for Consumers relating to Residential Immovable Property Regulations.

(2) The scope of these regulations is to:

(*a*) transpose the provisions of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010; and

(*b*) transpose article 28 of Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU.

(3) These regulations lay down a common framework for certain aspects of laws, regulations and administrative provisions concerning credit agreements, including an obligation to carry out a creditworthiness assessment before granting credit, as a basis for the development of effective underwriting standards in relation to residential immovable property, and for certain prudential and supervisory requirements, including for the establishment and supervision of credit intermediaries.

PART II

Definitions

Definitions. *Amended by: L.N. 266 of 2014; L.N. 259 of 2016; L.N. 86 of 2018; XVI.2019.72.* Cap. 378.

2. For the purpose of these regulations:

"the Act" means the Consumer Affairs Act;

"advertisement" means any form of representation, including a catalogue, a circular and a price list, about a trade, business, craft or profession in order to promote the supply or transfer of goods or services, immovable property, rights or obligations and the term "advertising" shall be construed accordingly;

*Repealed by Legal Notice 261 of 2026.
†see regulation 1(2) of these regulations, as originally promulgated.

"advisory services" means the provision of personal recommendations to a consumer in respect of one or more transactions relating to credit agreements and constitutes a separate activity from the granting a credit and from the credit intermediation activities in terms of the definition "credit intermediary";

"ancillary service" means a service offered to the consumer in conjunction with the credit agreement;

"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 21(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;

"appointed representative" means a natural or legal person who performs activities in terms of the definition "credit intermediary" that is acting on behalf of and under the full and unconditional responsibility of only one credit intermediary;

"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;

"Bridging loan" means a credit agreement either of no fixed duration or which is due to be repaid within twelve months, used by the consumer as a temporary financing solution while transitioning to another financial arrangement for the immovable property.

"bundling practice" means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement 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;

S.L. 12.19. "Civil Court" means the Civil Court (Commercial Section) established by article 3 of the Civil Court (Establishment of Sections) Order;

"competent authorities" means the MFSA and the Director General;

"consumer" means any individual who in transactions and other matters covered by the Act or any regulations made thereunder including these regulations, is acting for purposes which are not related to and outside his trade, business, craft or profession;

"contingent liability or guarantee" means a credit agreement which acts as a guarantee to another separate but ancillary transaction, and where the capital secured against an immovable property is only drawn down if an event or events specified in the contract occur;

"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 a credit falling within the scope of these regulations in accordance with regulation 3;

"creditor" means a natural or legal person who, duly authorised, grants or promises to grant credit in the course of his trade, business or profession;

"credit agreement" means an agreement whereby a creditor, grants or promises to grant, to a consumer, credit in the form of a deferred payment or other similar financial arrangement, and shall be distinct from the public deed of loan;

"Credit Intermediaries' Rule" means a rule issued by the MFSA in terms of these regulations;

"credit intermediary" means a natural or legal person who is not acting as a creditor or Notary Public and not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary, and who, in the course of his trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration:

(*a*) presents or offers credit agreements to consumers;

(*b*) assists consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements other than as referred to in paragraph (a); or

(*c*) concludes credit agreements with consumers on behalf of the creditor;

"creditworthiness assessment" means the evaluation of the prospect for the debt obligation resulting from the credit agreement to be met;

"Data Protection Directive" means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, 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;

"the Director General" means the Director General (Consumer Affairs) as defined in the Act;

"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;

"EBA" means the European Banking Authority established by Regulation (EU) No 1093/2010;

"ESIS" means the European Standardised Information Sheet set out in the First Schedule;

"European credit intermediary" means a credit intermediary admitted in another Member State in terms of the MCD;

"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;

"European regulatory authority" means a body which is in a country or territory outside Malta that is a Member State and is empowered by its national law or regulation, or by public authorities in the Member State concerned expressly empowered for that purpose by national law, to ensure the application and enforcement of the MCD:

Provided that where there is more than one European regulatory authority in a Member State, the European regulatory authority for the purposes of these regulations shall be the European regulatory authority which has been designated by the Member State concerned as the single contact point for the purposes of the MCD in accordance with Article 36(1) of the MCD;

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

Cap. 376.

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

Cap. 330.

"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;

"foreign currency loan" means a credit agreement where the credit is:

(*a*) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the credit is to be repaid; or

(*b*) denominated in a currency other than that of the Member State in which the consumer is resident;

"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:

(*a*) where the creditor or credit intermediary is a natural person, the Member State in which his head office is situated;

(*b*) where the creditor or credit intermediary is a legal person, the Member State in which its 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 or credit intermediary has a branch or provides services;

"Maltese credit intermediary" means a credit intermediary who is admitted in terms of these regulations;

" "Maltese creditor" means a credit institution which is licensed in terms of the Banking Act and, or, a financial institution which is licensed in terms of the Financial Institutions Act to carry out lending; Cap. 371. Cap. 376.

"MCD" means Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, 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;

"Member State" has the same meaning assigned to it in the Act;

"MFSA" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act; Cap. 330.

"non-credit institution" means any creditor that is not a credit institution;

"Notary Public" has the same meaning 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;

"Regulation (EU) No. 1093/2010" means Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/78/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;

"shared equity credit agreement" means a credit agreement where the capital repayable is based on a contractually set percentage of the value of the immovable property at the time of the capital repayment or repayments;

"staff" means:

(*a*) any natural person working for the creditor, or credit intermediary 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*);

"tied credit intermediary" means any credit intermediary who acts on behalf of and under the full and unconditional responsibility of:

(*a*) only one creditor;

(*b*) only one group; or

(*c*) a number of creditors or groups which does not represent the majority of the market;

"third country" means a country that is not a Member State;

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

"total amount payable to the consumer" means the sum of the total amount of the credit and 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 the creditor to obtain such credit on the terms and conditions marketed;

"tying practice" means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately.

PART III

Scope and Application

Scope and application. *Substituted by: L.N. 259 of 2016.*

3. (1) These regulations shall apply to:

(*a*) credit agreements which are secured by a hypothec or privilege on residential immovable property or secured by a right related to residential immovable property; and

(*b*) credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.

(2) These regulations shall not apply to:

(*a*) equity release credit agreements where the creditor:

(i) contributes 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

(ii) will not seek repayment of the credit until the occurrence of one or more specified life events of the consumer as may be defined by the competent authorities, unless the consumer breaches his contractual obligations which allows the creditor to terminate the credit agreement;

(*b*) credit agreements where the credit is granted by an employer to his employees as a secondary activity where such a credit agreement is offered free of interest or at an APRC lower than those prevailing on the market and not offered to the public generally;

(*c*) credit agreements where the credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit;

(*d*) credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month;

(*e*) credit agreements which are the outcome of a settlement reached in court or before another statutory

authority;

(*f*) credit agreements which relate to the deferred payment, free of charge, of an existing debt and which do not fall within the scope of sub-regulation (1)(*a*).

Added by: L.N. 259 of 2016.

PART IV

Competent Authorities

Competent authorities. *Added by: L.N. 259 of 2016. Amended by: XVI.2019.72.*

3A. (1) The competent authorities for the purposes of these regulations shall be the MFSA and the Director General:

Provided that the single contact point for the purposes of the provisions of these regulations transposing the MCD, and to receive requests for exchange of information or cooperation pursuant to Article 36(1) of the MCD shall be the MFSA.

(2) The MFSA and the Director General shall, for the purposes of ensuring the application and enforcement of these regulations:

(*a*) cooperate with one another whenever necessary in order to carry out their duties under these regulations, including for the purposes of cooperating with the EBA as required under these regulations; and

(*b*) collaborate closely in order to discharge their duties effectively:

Provided that with regard to this sub-regulation and to any other reference in these regulations to the application and enforcement of these regulations by the Director General, this shall be without prejudice to the competences assigned to the Civil Court by the Act and by the Malta Competition and Consumer Affairs Authority Act, and to the judicial proceedings established in the Act

(3) The competent authorities, all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy.

(4) Without prejudice to the cases covered by criminal law or by these regulations, the competent authorities, all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities shall, unless such information is in summary or aggregate form, not divulge any confidential information which they may receive in the course of their duties to any person or authority whatsoever:

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

(5) The MFSA shall inform the European Commission and the EBA of the designation of the MFSA and the Director General, in terms of Article 5(4) of the MCD, and any changes thereto,

indicating any division of the respective duties between the MFSA and the Director General:

Provided that such notification shall be made as soon as possible and at the latest on the coming into force of these regulations.

(6) The competent authorities shall exercise their powers directly in conformity with national law.

Powers and duties of the MFSA. *Added by: L.N. 259 of 2016.*

3B. (1) It shall be the duty of the MFSA to carry out the functions and duties prescribed by these regulations and any Credit Intermediaries' Rules issued thereunder and to ensure that creditors and credit intermediaries carrying out their activities in Malta comply with these regulations and any directives and Credit Intermediaries' Rules made or issued thereunder, and with the conditions of their admission:

Provided that in pursuance of that duty the MFSA shall at all times afford such co-operation to the Director General, as the Director General may require in the discharge of its duties.

(2) The MFSA shall monitor the activities of creditors and credit intermediaries so as to assess compliance with the requirements of these regulations and any Credit Intermediaries' Rules issued thereunder.

(3) The MFSA may issue Credit Intermediaries' Rules in order to better carry out and to better implement the provisions of these regulations and for the purpose of implementing any guidelines, recommendations and decisions issued by the EBA in terms of Regulation (EU) No. 1093/2010.

(4) Credit Intermediaries' Rules shall be binding on credit intermediaries and others as may be specified therein.

(5) Credit Intermediaries' Rules and any amendment or revocation thereof shall be officially communicated to credit intermediaries and the MFSA shall make copies thereof available to the public.

(6) Without prejudice to any of the powers conferred by these regulations, the MFSA 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 or any Credit Intermediaries' Rules issued thereunder:

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.

(7) Any person to whom a notice is given in accordance with sub-regulation (6) shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive.

(8) Where the MFSA 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.

(9) In the event of reasonable doubt as to whether credit intermediation activities in terms of the definition "credit intermediary" in regulation 2 are or are not being transacted in or from Malta by any person, the matter shall be conclusively determined by the MFSA.

Added by: L.N. 259 of 2016.

PART V

Financial Education of Consumers

Financial education of consumers. *Added by: L.N. 259 of 2016.*

3C. (1) The MFSA shall promote measures that support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to credit agreements.

(2) The MFSA shall provide clear and general information to consumers on the credit granting process in relation to credit, in order to guide consumers, especially those entering into a credit agreement for the first time.

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

(4) The MFSA may also request creditors and credit intermediaries, in writing, to provide clear and general information to consumers on the credit granting process in relation to credit, in order to guide consumers, especially those entering into a credit agreement for the first time.

(5) Any information provided to consumers by the MFSA in accordance with sub-regulation (2) and any information which creditors and credit intermediaries are required to provide to consumers in accordance with sub-regulation (4) shall be made publicly available.

(6) The MFSA shall also disseminate information to consumers regarding the guidance which may be published from time to time by the MFSA and, or, by creditors and credit intermediaries in accordance with sub-regulation (5), as well as regarding any guidance on the credit granting process in relation to credit, which may be provided to consumers by the Director General and by consumer organisations from time to time.

Amended by: L.N. 259 of 2016.

PART VI

Obligations of the Creditor and Credit Intermediary

Obligation to comply with regulations. *Substituted by: L.N. 259 of 2016.*

4. (1) A creditor and a credit intermediary shall take all necessary steps to ensure full compliance with these regulations.

(2) A credit intermediary shall:

(*a*) indicate in advertising and documentation intended for consumers, the extent of his powers, in particular whether he is a tied credit intermediary, and in such case, whether he acts on behalf of and under the full and unconditional responsibility of only one creditor,

only one group, or a number of creditors or groups which does not represent the majority of the market;

(*b*) disclose the fee, if any, payable by the consumer for his services, which fee shall be agreed in writing or on a durable medium between the consumer and the credit intermediary before the conclusion of the credit agreement; and

(*c*) disclose the fee, if any, payable by the consumer to the credit intermediary for his services to the creditor for the purpose of calculating the annual percentage rate of charge.

Obligation to provide information free of charge to consumers. *Added by: L.N. 259 of 2016.*

4A. When information is provided to consumers in compliance with the requirements set out in these regulations, such information shall be provided without charge to the consumer.

Conduct of business obligations when providing credit to consumers. *Substituted by: L.N. 259 of 2016.*

5. (1) When manufacturing credit products falling within the scope of these regulations in accordance with regulation 3, or granting, intermediating or providing advisory services on credit and, where appropriate, ancillary services to consumers or when executing a credit agreement, the creditor and, or the credit intermediary shall act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers:

Provided that in relation to the granting, intermediating 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 8B(3)(*a*).

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

(3) When establishing and applying remuneration policies for staff responsible for the assessment of creditworthiness, creditors shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

(*a*) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the creditor;

(*b*) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of

the creditor, and incorporates measures to avoid conflicts of interest, in particular by providing that remuneration is not contingent on the number or proportion of applications accepted;

(4) Creditors and credit intermediaries providing advisory services shall 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.

Knowledge and competence requirements for staff.
Substituted by: L.N. 259 of 2016.

6. (1) Creditors and credit intermediaries 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 credit agreements, the carrying out of credit intermediation activities in terms of the definition "credit intermediary" in regulation 2, or the provision of advisory services.

(2) Where the conclusion of a credit agreement includes an ancillary service, creditors and credit intermediaries 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 home Member State, the MFSA shall be responsible for establishing the minimum knowledge and competence requirements for staff of Maltese creditors and of Maltese credit intermediaries, in accordance with the principles set out in the Third Schedule:

Provided that where a Maltese creditor, or a Maltese credit intermediary, provides its services within the territory of one or more other Member States through the establishment of a branch, the authority responsible for establishing the minimum knowledge and competence requirements applicable to the staff of such branch, shall, in accordance with paragraph (i) of Article 9(3) of the MCD, be the European regulatory authority of the host Member State:

Provided further that where a Maltese creditor, or a Maltese credit intermediary, provides its services within the territory of one or more other Member States under the freedom to provide services, the European regulatory authority of the host Member State may, in accordance with paragraph (ii) of Article 9(3) of the MCD, establish the minimum knowledge and competence requirements referred to in paragraph 1(*b*), (*c*), (*e*) and (*f*) of the Third Schedule.

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

(*a*) through the establishment of a branch, the MFSA shall be responsible for establishing the minimum knowledge and competence requirements applicable to the staff of such a branch in accordance with the Third Schedule;

(*b*) under the freedom to provide services, the MFSA may

establish the minimum knowledge and competence requirements for those requirements referred to in paragraph 1(*b*), (*c*), (*e*) and (*f*) of the Third Schedule.

(5) The MFSA shall supervise creditors and credit intermediaries authorised to provide their services in Malta in order to ensure compliance with the requirements of sub-regulations (1) to (4):

Provided that for the purposes of this sub-regulation, the MFSA shall have the power to require such creditors and credit intermediaries to provide such evidence as the MFSA may deem necessary.

(6) Where Malta is the home Member State, for the effective supervision of Maltese creditors and Maltese credit intermediaries providing their services within the territory of other Member States under the freedom to provide services, the MFSA shall cooperate closely with the European regulatory authority of the host Member State for the effective supervision and the enforcement of the minimum knowledge and competence requirements of the host Member State.

(7) Where Malta is the host Member State, for the effective supervision of European creditors and European credit intermediaries providing their services in Malta under the freedom to provide services, the MFSA shall cooperate closely with the European regulatory authority of the home Member State for the effective supervision and enforcement of the minimum knowledge and competence requirements established under these regulations and any Credit Intermediaries' Rules issued thereunder.

(8) For the purposes of sub-regulations (6) and (7), the MFSA may, in accordance with Article 9(5) of the MCD:

(*a*) delegate tasks and responsibilities to the European regulatory authorities of other Member States;

(*b*) be delegated tasks and responsibilities by European regulatory authorities of other Member States.

(9) The MFSA may issue, amend or revoke Credit Intermediaries' Rules as it shall consider appropriate for carrying into effect the provisions of this regulation and of the Third Schedule.

(10) Any criteria established by the MFSA in order for credit intermediaries' or creditors' staff to meet their professional requirements shall be made public.

PART VII

Added by: L.N. 259 of 2016.

Information and practices preliminary to the conclusion of the credit agreement

Obligation to provide pre-contractual information. *Substituted by: L.N. 259 of 2016.*

7. (1) The creditor and, where applicable, the credit intermediary, shall provide the consumer with the personalised information needed to compare the credits 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 in accordance with regulation 12;

(*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 ESIS, as set out in the First Schedule:

Provided that for the purposes of sub-regulation (2) the creditor and, where applicable, the credit intermediary, may, up to 21 March 2019, continue to use the ESIS applicable prior to the entry into force of this regulation.

(3) Creditors and, where applicable, credit intermediaries, shall provide the ESIS 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 ESIS previously provided in accordance with this sub-regulation, it shall be accompanied by an updated ESIS.

(4) The consumer shall be entitled to a full seven (7) 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 and, where applicable, the credit intermediary who has supplied the ESIS 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 ESIS prior to the conclusion of the contract.

S.L. 330.07

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

Provided that where the creditor or, where applicable, the credit intermediary, wishes to provide to the consumer any

additional information, and, or where the creditor, or where applicable the credit intermediary, 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 ESIS.

(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 3 to 6 of Part A of the First Schedule. S.L. 330.07

(8) The creditor or, where applicable, the credit intermediary 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. *Added by: L.N. 259 of 2016.*

7A. (1) Creditors and, where applicable, credit intermediaries shall provide adequate explanations to the consumer on the proposed credit agreement and any ancillary services, in order to place the consumer in a position enabling him to assess whether the proposed credit agreement 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 to be provided in accordance with regulation 9 in the case of creditors and regulations 9 and 10 in the case of credit intermediaries;

(*b*) the essential characteristics of the product proposed;

(*c*) the specific effects the products proposed may have on the consumer, including the consequences of default in payment by the consumer; and

(*d*) where ancillary services are bundled with a credit agreement, whether each component of the bundle can be terminated separately and the implications for the consumer of doing so.

(3) The Director General may adapt the manner by which and the extent to which the explanations referred to in sub-regulations (1) and (2) is given, as well as by whom it is given, to the circumstances of the situation in which the credit agreement is offered, the person to whom it is offered and the nature of the credit offered.

Content of pre-contractual information. *Substituted by: L.N. 259 of 2016.*

8. (1) Creditors and, where applicable, tied credit intermediaries shall make available clear and comprehensible general information about credit agreements at all times on paper or on another durable medium or in electronic form, and as much as possible, in a plain and intelligible language that can be easily

understood by 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*) where applicable, the identity and geographical address of the credit intermediary involved;

(*c*) the purposes for which the credit may be used;

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

(*e*) 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;

(*f*) a list of related cost elements, such as administrative costs, insurance costs, legal costs, and where applicable, the costs of intermediaries;

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

(*h*) the possible duration of the credit agreement;

(*i*) an indication of the currency or currencies in which the credit falling within the scope of these regulations in accordance with regulation 3 is available, including an explanation of the implications for the consumer where the credit is denominated in a foreign currency;

(*j*) 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;

(*k*) 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;

(*l*) an indication of possible further costs, not included in the total cost of the credit to the consumer, to be paid in connection with a credit agreement;

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

(*n*) where applicable, a clear and concise statement that compliance with the terms and conditions of the credit agreement does not guarantee repayment of the total

amount of credit under the credit agreement;

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

(*p*) 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;

(*q*) details on how to obtain information on tax relief on the credit agreement interest or other public subsidies;

(*r*) an indication of ancillary services the consumer is obliged to acquire in order to obtain the credit 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

(*s*) a general warning concerning possible consequences of non-compliance with the commitments linked to the credit agreement.

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

(4) The MFSA shall notify to the European Commission, without delay, any requirements imposed on creditors in addition to those prescribed in Article 13(1) of the MCD:

Provided that for the purposes of this sub-regulation, the Director General shall inform the MFSA, without delay, of any such requirements as may from time to time be imposed on creditors by the Director General.

Information requirements concerning credit intermediaries. *Added by: L.N. 259 of 2016.*

8A. (1) Maltese credit intermediaries shall, in good time before the carrying out of any of the credit intermediation activities in terms of the definition "credit intermediary" in regulation 2, provide the consumer with at least the following information on paper or on another durable medium:

(*a*) the identity and the geographical address of the Maltese credit intermediary;

(*b*) the register in which he has been included, the registration number, where applicable, and the means for verifying such registration;

(*c*) whether the Maltese credit intermediary is tied to or works exclusively for one or more creditors:

Provided that where the Maltese credit intermediary is tied to or works exclusively for one or more creditors, it shall provide the names of the creditors for which it is acting:

Provided further that where the Maltese credit intermediary meets the conditions laid down in accordance with regulation 8B(4), it may disclose that it is independent;

(*d*) whether the Maltese credit intermediary offers

advisory services;

(*e*) the fee, where applicable, payable by the consumer to the Maltese credit intermediary for its services or, where this is not possible, the method for calculating the fee;

(*f*) the procedures allowing consumers or other interested parties to register complaints internally about the Maltese credit intermediary and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought;

(*g*) where applicable, the existence and, where known, the amount of commissions or other inducements, payable by the creditor or third parties to the Maltese credit intermediary for its services in relation to the credit agreement:

Provided that where the amount is not known at the time of disclosure, the Maltese credit intermediary shall inform the consumer that the actual amount will be disclosed at a later stage in the ESIS.

(2) Maltese credit intermediaries who are not tied but who receive commission from one or more creditors shall, at the consumer's request, provide information on the variation in levels of commission payable by the different creditors providing the credit agreements being offered to the consumer. Maltese credit intermediaries shall also inform consumers that they have the right to request such information.

(3) Where a Maltese credit intermediary charges a fee to the consumer and additionally receives commission from the creditor or a third party, the Maltese credit intermediary shall explain to the consumer whether or not the commission will be offset against the fee, either in part or in full.

(4) Maltese credit intermediary shall communicate to the creditor the fee, if any, payable by the consumer to the Maltese credit intermediary for its services, for the purpose of calculating the APRC.

Added by: L.N. 259 of 2016.

PART VIII

Advisory Services

Standards for advisory services. *Added by: L.N. 259 of 2016.*

8B. (1) The creditor or credit intermediary 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 or credit intermediary 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 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 5 and 6:

(*a*) creditors or credit intermediaries shall obtain the necessary information regarding the consumer's personal and financial situation, his preferences and objectives so as to enable the recommendation of suitable credit agreements. 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 credit agreement;

(*b*) creditors or tied credit intermediaries shall consider a sufficiently large number of credit agreements in their product range and recommend a suitable credit agreement or several suitable credit agreements from among their product range for the consumer's needs, financial situation and personal circumstances;

(*c*) non-tied credit intermediaries shall consider a sufficiently large number of credit agreements available on the market and recommend a suitable credit agreement or several suitable credit agreements available on the market for the consumer's needs, financial situation and personal circumstances;

(*d*) creditors or credit intermediaries shall act in the best interests of the consumer by:

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

(ii) recommending suitable credit agreements in accordance with paragraphs (*a*), (*b*) and (*c*); and

(*e*) creditors or credit intermediaries shall give the consumer a record on paper or on another durable medium of the recommendation provided.

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

(5) Creditors and credit intermediaries shall warn a consumer when, considering the consumer's financial situation, a credit agreement may include a specific risk for the consumer.

(6) Advisory services shall only be provided by creditors or credit intermediaries.

(7) This regulation is without prejudice to regulation 7A and to Member States' 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.

Added by: L.N. 259 of 2016.

PART IX

Creditworthiness Assessment

Obligation to assess the credit worthiness of the consumer. *Substituted by: L.N. 259 of 2016.*

9. (1) The creditor shall, before concluding a credit agreement, make a thorough assessment of the consumer's creditworthiness, taking appropriate account of factors relevant to verifying the prospect of the consumer to meet his obligations under the credit agreement.

(2) Creditors shall establish, document and maintain the procedures and information on which the assessment referred to in sub-regulation (1) is based.

(3) The assessment of creditworthiness shall not rely predominantly on the value of the residential immovable property exceeding the amount of the credit or on the assumption that the residential immovable property will increase in value unless the purpose of the credit agreement is to construct or renovate the residential immovable property.

(4) Where a creditor concludes a credit agreement with a consumer, the creditor shall not subsequently cancel or alter the credit agreement to the detriment of the consumer on the grounds that the assessment of creditworthiness was incorrectly conducted:

Provided that this sub-regulation shall not apply where it is demonstrated that the consumer knowingly withheld or falsified the information within the meaning of regulation 12.

(5) The creditor shall only make the credit available to the consumer where the result of the creditworthiness assessment indicates that the obligations resulting from the credit agreement are likely to be met in the manner required under that agreement.

(6) The creditor shall, in accordance with Article 10 of the Data Protection Directive, inform the consumer in advance that a database is to be consulted.

(7) Where an application for credit is rejected, the creditor shall inform the consumer without delay of the rejection in accordance with regulation 10.

(8) The creditor shall, before any significant increase in the total amount of credit is granted to the consumer after the conclusion of the credit agreement and unless such additional credit was envisaged and included in the original creditworthiness assessment, re-assess the consumer's creditworthiness on the basis of updated information.

(9) This regulation shall be without prejudice to the Data Protection Directive.

Creditworthiness assessment. *Amended by: L.N. 259 of 2016.*

10. (1) Where the assessment of the consumer's creditworthiness results in a negative prospect for his ability to repay the credit over the lifetime of the credit agreement, the creditor shall refuse to provide such credit.

(2) Where the application for credit is rejected, the creditor shall inform the consumer without delay and free of charge of the rejection, of the reasons for rejection and, where applicable, that the decision is based on automated processing of data.

(3) Where the rejection of an application for credit is based on the result of the database consultation, the creditor shall inform the consumer without delay and free of charge of the result of such consultation and of the particulars of the database consulted, including the name of the database that was consulted as well as of its controller and of the consumer's right to access and, where necessary, his right to rectify his data in that database:

Provided that the creditor shall not be required to give such information if the information to be provided is prohibited by any other law, or is contrary to the public policy or public security of Malta.

(4) Where the application is rejected on the basis of an automated decision or a decision based on methods such as automated credit scoring, the creditor shall inform the consumer without delay and free of charge.

(5) The creditor shall explain the logic involved in the automated decision to the consumer.

(6) The consumer shall have the opportunity to request for the decision to be reviewed manually.

(7) This regulation shall be without prejudice to the Data Protection Directive.

Agreement to change the total amount of credit. *Amended by: L.N. 259 of 2016.*

11. If the parties agree to change the total amount of credit after the conclusion of the credit agreement, the creditor shall:

(*a*) update the financial information at his disposal concerning the consumer; and

(*b*) re-assess the consumer's creditworthiness, before the total amount of credit is significantly increased.

Disclosure and verification of consumer information. *Substituted by: L.N. 259 of 2016.*

12. (1) The assessment of creditworthiness referred to in regulation 9 shall be carried out on the basis of information on the consumer's income and expenses and other financial and economic circumstances which is necessary, sufficient and proportionate.

(2) The information referred to in sub-regulation (1) shall be obtained by the creditor from relevant internal or external sources, including the consumer, and including information provided to the credit intermediary during the application process of the credit:

Provided that such information shall be appropriately verified, including, when necessary, through reference to independently verifiable documentation:

Provided further that such information shall be up to date at

that moment in time, and on reasonable assumptions as to the consumer situation over the term of the proposed credit agreement.

(3) Credit intermediaries shall accurately submit the necessary information obtained from the consumer to the relevant creditor to enable the creditworthiness assessment to be carried out.

(4) Creditors shall specify in a clear and straightforward way at the pre-contractual phase the necessary information and independently verifiable evidence that the consumer needs to provide and the time-frame within which the consumer needs to provide the information:

Provided that such request for information shall be proportionate and limited to what is necessary to conduct a proper creditworthiness assessment:

Provided further that, where necessary to enable the assessment of creditworthiness, creditors may seek clarification of the information received in response to that request.

(5) A creditor shall not terminate the credit agreement on the grounds that the information provided by the consumer before the conclusion of the credit agreement was incomplete:

Provided that the creditor may terminate the credit agreement where it is demonstrated that the consumer knowingly withheld or falsified the information.

(6) The Director General shall have measures in place to ensure that consumers are aware of the need to provide correct information in respect to the request referred to in sub-regulation (4) and that such information is as complete as necessary to conduct a proper creditworthiness assessment.

(7) The creditor or credit intermediary shall warn the consumer that, where the creditor is unable to carry out an assessment of the creditworthiness because the consumer chooses not to provide the information or verification necessary for an assessment of creditworthiness, the credit cannot be granted.

(8) The warning referred to in sub-regulation (7) may be provided in a standardised format.

(9) This regulation shall be without prejudice to the Data Protection Directive, in particular Article 6 thereof.

Collection and processing of data. *Substituted by: L.N. 259 of 2016.* Cap. 586.

13. Without prejudice to the provisions of the Data Protection Act, personal data obtained from a consumer or any other person in connection with the conclusion and management of any credit agreement may only be processed for the purpose of assessing the consumer's creditworthiness or of any such other person and their ability to repay in accordance with these regulations.

Property valuation. *Added by: L.N. 259 of 2016.*

13A. (1) The Director General shall ascertain that reliable standards for the valuation of residential immovable property for the purpose of credit agreements are developed in Malta.

(2) Creditors shall ensure that the standards referred to in sub-regulation (1) 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.

(3) Where third parties or other authorities are responsible for regulating independent appraisers who carry out property valuations, the Director General shall ensure that they comply with the rules that are in place.

(4) The Director General shall ensure that internal and external appraisers conducting property valuations are professionally competent and sufficiently independent from the credit underwriting process relating to credit agreements 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 X

Amended by: L.N. 259 of 2016.

Rights of the Consumer

Right to receive copy of the credit agreement. *Amended by: L.N. 266 of 2014. Substituted by: L.N. 259 of 2016.*

14. (1) Without prejudice to regulations 7 to 8A, 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 days from such registration.

Content of credit agreement. *Amended by: L.N. 266 of 2014; L.N. 259 of 2016.*

15. (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 8(2)(*c*), (*d*), (*f*), (*h*) to (*l*), and (*n*);

(*b*) the identities and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the credit intermediary involved;

(*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 capital amortisation, 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 without capital amortisation, 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 16 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.

Information regarding the modification of the terms and conditions of a credit agreement. *Added by: L.N. 18 of 2024.*

(2A) Without prejudice to other obligations provided for in these regulations, prior to modifying the terms and conditions of the credit agreement, the creditor shall communicate the following information to the consumer:

(*a*) a clear description of the proposed changes and, where applicable, of the need for consumer consent or of the changes introduced by operation of law;

(*b*) the time period for the implementation of the changes referred to in paragraph (a);

(*c*) the means for complaint available to the consumer regarding the changes referred to in paragraph (a);

(*d*) the time period available for filing any such complaint;

(*e*) the name and address of the Arbiter for Financial Services as established under the Arbiter for Financial Services Act before whom the consumer may submit the said complaint.

Cap. 555.

(3) The creditor shall make available to the consumer, free of charge and at any time throughout the duration of the home loan, 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 credit agreement entered into and between the creditor and, or the credit intermediary 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 and, or the credit intermediary, as may be amended from time to

time according to the terms thereof.

Early repayment.
Amended by:
L.N. 266 of 2014.
Substituted by:
L.N. 259 of 2016.

16. (1) A consumer shall have the right to discharge his obligations under a credit agreement, 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 regulations 8(2)(i) and 15(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 Director General 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.

Assignment of the creditor's rights or of the credit agreement itself. *Amended by: L.N. 259 of 2016; L.N. 18 of 2024.*

17. (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:

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

Cap. 16.

(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.

Foreign currency loans. *Added by: L.N. 259 of 2016.*

17A. (1) The Director General shall ensure that where a credit agreement relates to a foreign currency loan, an appropriate regulatory framework shall be in place at the time the credit agreement is concluded to ensure that the consumer has a right to convert the credit agreement into an alternative currency under specified conditions.

(2) In accordance with sub-regulation (1), the alternative currency referred to in the preceding sub-regulation shall be:

(*a*) the currency in which the consumer primarily receives income or holds assets from which the credit is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the credit agreement was made; and, or

(*b*) the currency of the Member State in which the consumer either was resident at the time the credit agreement was concluded or is currently resident.

(3) Where a consumer has a right to convert the credit agreement into an alternative currency in accordance with sub-regulation (1), the exchange rate at which the conversion is carried out shall be the market exchange rate applicable on the day of application for conversion unless otherwise specified in the credit agreement.

(4) Where a consumer has a foreign currency loan, the creditor shall warn the consumer on a regular basis on paper or on another durable medium at least where the value of the total amount payable by the consumer which remains outstanding or of the regular instalments varies by more than 20% from what it would be if the exchange rate between the currency of the credit agreement and the currency of the Member State applicable at the time of the conclusion of the credit agreement were applied. The warning shall inform the consumer of a rise in the total amount payable by the consumer, set out where applicable the right to convert to an alternative currency and the conditions for doing so and explain any other applicable mechanism for limiting the exchange rate risk to which the consumer is exposed.

(5) The arrangements applicable under this regulation shall be disclosed to the consumer in the ESIS and in the credit agreement.

Where there is no provision in the credit agreement to limit the exchange rate risk to which the consumer is exposed to a fluctuation in the exchange rate of less than 20%, the ESIS shall include an illustrative example of the impact of a 20% fluctuation in the exchange rate.

(6) The Director General may further regulate foreign currency loans provided that such regulation is not applied with retrospective effect.

Variable rate credits. *Added by: L.N. 259 of 2016.*

17B. 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 Director General; 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.

Arrears and enforcement. *Added by: L.N. 259 of 2016. Amended by: XLIV. 2021.25; L.N. 18 of 2024.*

17C. (1) Creditors shall have adequate policies and procedures to ensure that they make efforts to exercise, where appropriate, reasonable forbearance before enforcement proceedings are instituted. The said forbearance measures shall take into account, among other elements, the consumer's circumstances and among other possibilities may consist of:

(*a*) a total or partial refinancing of a credit agreement;

(*b*) a modification of the existing terms and conditions of a credit agreement, which among others may include:

(i) extending the term of the credit agreement;

(ii) changing the type of credit agreement;

(iii) deferring payment of all or part of the instalment repayment for a period;

(iv) changing the interest rate;

(v) offering a payment holiday;

(vi) partial repayments;

(vii) currency conversions;

(viii) partial forgiveness and debt consolidation:

Provided that the list of potential forbearance measures set out in this sub-regulation is without prejudice to the rules set out in national law, including in particular the national provisions implementing the European Banking Authority Guidelines on

management of non-performing and forborne exposures (EBA/GL/2018/06), the European Central Bank Guidance to banks on non-performing loans, and the Guidelines on the requirements regarding arrears and enforcement set out in the Fourth Schedule which implement the European Banking Authority Guidelines on arrears and foreclosure.

(2) The Director General shall adopt measures to encourage creditors to exercise reasonable forbearance in accordance with sub-regulation (1).

(3) Where the creditor is permitted to define and impose charges on the consumer arising from the default, those charges shall not be greater than is necessary to compensate the creditor for costs it has incurred as a result of the default.

(4) The parties to a credit agreement may expressly agree that the return or transfer to the creditor of the security or proceeds from the sale of the security is sufficient to repay the credit.

(5) Where the price obtained for the immovable property affects the amount owed by the consumer, the Director General shall implement procedures or measures to enable the best efforts price for the foreclosed immovable property to be obtained.

(6) Where after enforcement proceedings outstanding debt remains, the Director General shall ensure that measures to facilitate repayment in order to protect consumers are put in place.

(7) In accordance with sub-regulation (2)(1)(a) of regulation 3A and in terms of sub-regulations (2) and (3) of this regulation, the Director General shall adopt measures on the requirements regarding arrears and enforcement which emanate from the EBA Guidelines with the reference EBA/GL/2015/12 as set out in the Fourth Schedule:

Provided that the terms used and defined in these Regulations shall have the same meaning assigned to them in the Guidelines in the Fourth Schedule.

PART XI

Amended by: L.N. 259 of 2016.

Obligations of the Consumer

Obligation to disclose correct information. *Substituted by: L.N. 259 of 2016.*

18. (1) Consumers shall provide creditors and, where applicable, credit intermediaries with complete and correct information on their financial situation and personal circumstances in the context of the application process for credit.

(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 and, where applicable, credit intermediaries to be able to conduct a thorough assessment of the consumer's creditworthiness and make a decision on whether or not to grant the credit under the credit agreement, the creditors and, where applicable, credit intermediaries shall at the pre-contractual phase, clearly specify the information, including independently

verifiable evidence where necessary, that the consumer needs to provide.

(4) Creditors and, where applicable, credit intermediaries shall state the timing by which consumers are required to provide such information.

(5) In cases where the consumer chooses not to provide the information necessary for an assessment of his creditworthiness, the creditor or credit intermediary shall warn the consumer that he is unable to carry out a creditworthiness assessment and therefore that the credit agreement may not be granted. This warning may be provided in a standardised format.

(6) This regulation is without prejudice to the application of the Data Protection Act.". Cap. 586.

Added by: L.N. 159 of 2016.

PART XII

Requirements for Establishment of Credit Intermediaries

Admission of credit intermediaries. *Added by: L.N. 159 of 2016.*

18A. (1) Any credit intermediary who, carries out all or part of the credit intermediation activities in terms of the definition "credit intermediary" in regulation 2, or who provides advisory services in or from Malta, shall apply for admission with the MFSA in terms of these regulations.

(2) An application for admission in terms of these regulations shall be made in such form and manner as the MFSA may from time to time determine.

(3) The MFSA shall have the power to require any person to provide such information as it may deem necessary for the purpose of determining an application for admission or for the purposes of determining whether to restrict or withdraw an admission in terms of these regulations:

Provided that an application may only be withdrawn by written notice to the MFSA before admission is granted or refused.

(4) The MFSA shall determine an application by doing any of the following:

(*a*) granting an admission without conditions;

(*b*) granting an admission subject to such conditions as it may deem appropriate;

(*c*) refusing to grant an admission:

Provided that if it refuses an application it shall inform the applicant, in writing, of the reasons for the refusal.

(5) The MFSA may grant admission in terms of these regulations only if it is satisfied, on the basis of the information required to be submitted in terms of these regulations and any Credit Intermediaries' Rules issued thereunder, that admission ought to be granted.

(6) Subject to the provisions of these regulations, the MFSA may subject the admission referred to in this regulation to such conditions as it may deem appropriate, and having granted an

admission it may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(7) Credit intermediaries shall not be admitted by the MFSA unless they fulfil at least the requirements provided for in regulation 6 and the following professional requirements:

(*a*) credit intermediaries shall hold, at all times, professional indemnity insurance covering the territories in which they offer services, or some other comparable guarantee against liability arising from professional negligence:

Provided that for tied credit intermediaries who act on behalf of and under the full and unconditional responsibility of only one creditor, such a professional indemnity insurance or other comparable guarantee shall be provided by the creditor for which the credit intermediary is empowered to act;

(*b*) a natural person established as a credit intermediary, the members of the Board of Directors of a credit intermediary established as a legal person and natural persons performing equivalent tasks within a credit intermediary which is a legal person but does not have a Board of Directors, shall be of good repute. Such persons shall, as a minimum, have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they shall not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law;

(*c*) a natural person established as a credit intermediary, the members of the Board of Directors of a credit intermediary established as a legal person and natural persons performing equivalent tasks within a credit intermediary which is a legal person but does not have a Board of Directors, shall possess the appropriate level of knowledge and competence in relation to credit agreements.

(8) The MFSA shall, for the purposes of paragraph (*c*) of sub-regulation (7) establish the appropriate level of knowledge and competence in accordance with the principles set out in the Third Schedule.

(9) A credit intermediary admitted in terms of these regulations shall provide the MFSA with particulars of any changes in the information provided under these regulations and any Credit Intermediaries' Rules issued thereunder as soon as such credit intermediary becomes aware of such change.

(10) Where Malta is the home Member State, all Maltese credit intermediaries, whether established as natural or legal persons, shall be entered into a register with the MFSA.

(11) The register referred to in sub-regulation (10) shall be

maintained by the MFSA, who shall ensure that the said register is kept up to date and is publicly available online.

(12) The register referred to in sub-regulation (10) shall contain at least the following information:

(*a*) the names of the persons within the management who are responsible for the intermediation business;

(*b*) the Member States in which the Maltese credit intermediary conducts business under the rules on the freedom of establishment or the freedom to provide services and of which the Maltese credit intermediary has informed the MFSA in accordance with Article 32(3) of the MCD;

(*c*) whether the Maltese credit intermediary is tied or not;

(*d*) where a tied credit intermediary acts on behalf of and under the full and unconditional responsibility of only one creditor, the creditor on whose behalf the tied credit intermediary acts.

(13) Any credit intermediary who is to be admitted under these regulations who -

(*a*) is a legal person, shall have its head office and its registered office in Malta;

(*b*) is not a legal person, shall have its head office in Malta and shall actually carry on its main business in Malta.

(14) The MFSA shall establish a single information point to allow quick and easy public access to information from the register referred to in sub-regulation (10), which shall be compiled electronically and kept constantly updated.

(15) Without prejudice to regulations 18B and 18C, all admitted credit intermediaries shall comply with the requirements defined in sub-regulations (6), (7) and (8) on a continuing basis.

(16) The MFSA may issue, amend or revoke Credit Intermediaries' Rules as it shall consider appropriate for carrying into effect the provisions of this regulation.

(17) This regulation shall not apply to credit institutions licensed in terms of the Banking Act and, or to financial institutions licensed in terms of the Financial Institutions Act.

Cap. 371.

Cap. 376.

Credit intermediaries tied to only one creditor. *Added by: L.N. 159 of 2016.*

18B. (1) Tied credit intermediaries specified in paragraph (*a*) of the definition "tied credit intermediary" in regulation 2, may be admitted by the MFSA through the creditor on whose behalf the tied credit intermediary is exclusively acting.

(2) In the cases referred to in sub-regulation (1), the creditor shall remain fully and unconditionally responsible for any action or omission on the part of the tied credit intermediary that is acting on behalf of the creditor in areas regulated by the provisions of these regulations.

(3) The creditor shall ensure that the tied credit intermediaries referred to in this regulation comply with at least the professional

requirements set out in regulation 18A(7) and (8).

(4) Without prejudice to regulations 22F and 22G, creditors shall monitor the activities of tied credit intermediaries specified in paragraph (*a*) of the definition "tied credit intermediary" in regulation 2 in order to ensure that they comply with the provisions of these regulations. In particular, the creditor shall be responsible for monitoring compliance with the knowledge and competence requirements of the tied credit intermediary and its staff.

Appointed representatives. *Added by: L.N. 159 of 2016.*

18C. Maltese credit intermediaries shall not appoint appointed representatives.

Freedom of establishment and freedom to provide services by credit intermediaries (Malta as home Member State). *Added by: L.N. 159 of 2016.*

18D. (1) Where Malta is the home Member State, the admission of a credit intermediary by the MFSA shall, provided the activities that the credit intermediary intends to carry out in the host Member State are covered by the said admission and in accordance with regulation 18A(1), be effective for the entire territory of the European Union without further admission being required by the European regulatory authority of the host Member State for the carrying out of the activities and provision of service covered by the admission:

Provided that Maltese credit intermediaries shall not be allowed to provide their services in relation to credit agreements offered by:

(*a*) financial institutions licensed in terms of the Financial Institutions Act, to consumers in a host Member State in which such financial institutions are not allowed to operate; Cap. 376.

(*b*) credit institutions licensed in terms of the Banking Act to consumers in a host Member State, where such credit institutions have not exercised their right to establish a branch or to provide services in the relevant host Member State in terms of the Banking Act or any regulations made or Banking Rules issued thereunder. Cap. 371.

(2) Where Malta is the home Member State, any Maltese credit intermediary intending to carry out business for the first time in one or more Member States under the freedom to provide services or when establishing a branch, shall inform the MFSA.

(3) Within a period of one month after being informed in accordance with sub-regulation (2), the MFSA shall notify the European regulatory authority of the host Member State concerned of:

(*a*) the intention of the Maltese credit intermediary; and

(*b*) where the Maltese credit intermediary is a tied credit intermediary, the creditors to which the Maltese credit intermediary is tied and whether the creditors take full and unconditional responsibility for the Maltese credit intermediary's activities.

(4) The MFSA shall also, at the same time as a notification is

sent to the European regulatory authority of the host Member State concerned, inform the Maltese credit intermediary concerned of that notification.

(5) The Maltese credit intermediary may only start business in the host Member State concerned one month after the date on which he was informed by the MFSA in accordance with sub-regulation (4).

(6) Where the European regulatory authority of the host Member State concerned indicates to the Maltese credit intermediary the conditions under which, in areas not harmonised in European Union law, the activities of the Maltese credit intermediary are to be carried out in the host Member State concerned in accordance with Article 32(4) of the MCD, the Maltese credit intermediary shall carry out its activities in the host Member State in accordance with the conditions indicated by the European regulatory authority of the host Member State concerned.

Freedom of establishment and freedom to provide services by credit intermediaries (Malta as host Member State). *Added by: L.N. 159 of 2016. Amended by: L.N. 167 of 2022.*

18E. (1) Where Malta is the host Member State, a European credit intermediary shall only carry out in Malta activities which are covered by the admission granted by the European regulatory authority of the home Member State without further admission by the MFSA being required:

Provided that European credit intermediaries may not provide their services in relation to credit agreements offered by:

(*a*) non-credit institutions established in other Member States to consumers in Malta where such non-credit institutions are not allowed to operate in Malta; or

(*b*) credit institutions authorised in other Member States in terms of the CRD, where such credit institutions have not exercised their right to establish a branch or to provide services in Malta in terms of the CRD.

(2) Appointed representatives appointed by European credit intermediaries may not carry out any of the credit intermediation activities in terms of the definition "credit intermediary" in regulation 2, or provide advisory services in Malta.

(3) Where a European credit intermediary informs the European regulatory authority of the home Member State about its intention to carry out business for the first time in Malta under the freedom to provide services or when establishing a branch in accordance with Article 32(3) of the MCD, the European regulatory authority of the home Member State shall, in accordance with Article 32(3) of the MCD, notify the MFSA of:

(*a*) the intention of the European credit intermediary; and

(*b*) where the European credit intermediary is a tied credit intermediary, the creditors to which the European credit intermediary is tied and whether the creditors take full and unconditional responsibility for the European credit intermediary's activities:

(4) The MFSA shall use the information received in accordance

with sub-regulation (3) to enter the necessary information into its register.

(5) A European credit intermediary may only start business in Malta one month after the date on which he is informed by the European regulatory authority of the home Member State of the notification submitted to the MFSA in accordance with Article 32(3) of the MCD.

(6) Before the branch of a European credit intermediary commences its activities, or within two months of receiving the notification referred to sub-regulation (3), the MFSA shall prepare for the supervision of the European credit intermediary in accordance with regulations 22F and 22G and, if necessary, indicate to the European credit intermediary the conditions under which, in areas not harmonised in European Union law, those activities are to be carried out in Malta.

Withdrawal of admission of credit intermediaries. *Added by: L.N. 159 of 2016. Amended by: L.N. 167 of 2022.*

18F. (1) An admission granted to a credit intermediary by the MFSA shall automatically cease to have any effect if the holder:

(*a*) expressly renounces the admission;

(*b*) has carried out neither credit intermediation activities in terms of the definition "credit intermediary" in regulation 2, nor provided advisory services, for the preceding six months; or

(*c*) where the credit intermediary is a legal person, has ceased to operate as a result of a merger with another credit intermediary or for any other reason whatsoever.

(2) The MFSA may withdraw the admission granted to a credit intermediary in accordance with regulation 18A where such a credit intermediary:

(*a*) has obtained the admission through false or misleading statements or any other irregular means;

(*b*) no longer fulfils the requirements under which admission was granted;

(*c*) has seriously or systematically infringed the provisions of these regulations governing the operating conditions for credit intermediaries;

(*d*) if any document or information accompanying an application for an admission or any information given in connection therewith is false in any material particular;

(*e*) conceals from, or fails to notify the MFSA with any document or information or change therein which it was its duty to reveal or notify under these regulations or any Credit Intermediaries' Rules issued thereunder;

(*f*) where the credit intermediary is a legal person, is declared bankrupt or, goes into liquidation or is otherwise dissolved;

(*g*) fails to comply with any of the provisions of these regulations or any Credit Intermediaries' Rules issued

thereunder or with the conditions under which the admission is granted; or

(*h*) has insufficient assets to cover its liabilities.

(3) Where Malta is the home Member State and where the admission of a credit intermediary automatically ceases to have effect in accordance with sub-regulation (1) or is withdrawn by the MFSA in accordance with sub-regulation (2), the MFSA shall immediately notify the European regulatory authority of the relevant host Member States of such automatic cessation of admission or of such withdrawal as soon as possible and at the latest within fourteen (14) days from the date on which the admission automatically ceases to have effect or from the date of the withdrawal, by any appropriate means.

(4) The MFSA shall, without undue delay, delete from the register referred to in regulation 18A any credit intermediaries whose admission has automatically ceased to have effect or has been withdrawn.

(5) The MFSA may also impose restrictions on an admission granted in terms of these regulations as it shall consider appropriate for the proper compliance by credit intermediaries with the provisions of these regulations, any Credit Intermediaries' Rules issued thereunder and the conditions, if any, of its admission, and may include:

(*a*) the removal of any officer of the credit intermediary or the replacement of any officer by such person as the MFSA may designate;

(*b*) the requirement for the credit intermediary to take or refrain from any action;

(*c*) the requirement that the credit intermediary be prohibited from undertaking any transaction or transactions or any class of business or be permitted to undertake any transaction or transactions or any class of business only upon such terms as the MFSA may prescribe:

Provided that the MFSA shall have the power to vary or remove any restrictions imposed under this regulation.

(6) Where the MFSA intends to restrict or withdraw an admission or to vary any restriction, it shall serve written notice of its intention on the credit intermediary; such notice shall specify the grounds upon which the MFSA intends to take action and shall specify a period within which the credit intermediary shall be entitled to make representations to the MFSA as to why such action should not be taken. Unless the MFSA decides that the matter is urgent, it shall not impose or vary any restriction or withdraw an admission before the expiry of such period.

(7) Where the MFSA is satisfied that the circumstances so warrant, it may at any time make public any action it has taken under this regulation.

Amended by:
L.N. 159 of 2016.

PART XIII

Miscellaneous

Advertising. *Amended by: L.N. 266 of 2014. Substituted by: L.N. 159 of 2016.*

19. (1) Without prejudice to Directive 2005/29/EC, any advertising and marketing communications concerning credit agreements 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 a credit agreement shall be prohibited.

(2) Without prejudice to the provisions relating to unfair commercial practices under the Act, any advertising concerning credit agreements 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 or, where applicable, the credit intermediary;

(*b*) that the product advertised is a credit agreement and, where applicable, that the credit agreement will be secured by a hypothec or privilege on residential immovable property, by a right related to residential immovable property;

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

(*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 credit;

(*j*) where applicable, a warning regarding the fact that possible fluctuations of the exchange rate could affect the amount payable by the consumer; and

(*k*) where applicable, a warning concerning the risk of losing the immovable property in the event of non-observance of the commitments linked to the credit agreement.

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

Provided that the Director General shall adopt criteria for determining a representative example.

(5) (*a*) Any advertising concerning credit agreements which include 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 credit agreement, 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 Director General may require the inclusion of a concise and proportionate warning concerning specific risks associated with credit agreements:

Provided that the Director General shall notify the MFSA of any such requirements without undue delay:

Provided further that the MFSA shall, upon receipt of the notification from the Director General referred to in this sub-regulation, notify those requirements to the European Commission without delay.

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

Tying and bundling practices. *Added by: L.N. 259 of 2016.*

19A. (1) Whilst bundling practices shall be allowed, tying practices shall be prohibited.

(2) Notwithstanding sub-regulation (1) creditors can request the consumer or a family member or close relation of the consumer to open or maintain a payment or a savings account, where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for the creditor in the event of default.

(3) 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.

Cross-border access. *Substituted by: L.N. 259 of 2016.*

20. (1) Maltese and European creditors shall have access to databases used in Malta for assessing the creditworthiness of consumers:

Provided that creditors may only access such databases for

the sole purpose of monitoring consumers' compliance with the credit obligations over the life of the credit agreement.

(2) Any conditions imposed for access to the databases referred to in sub-regulation (1) shall be non-discriminatory.

(3) Sub-regulation (1) shall apply both to databases which are operated by private credit bureaux or credit reference agencies and to public registers:

Provided that a request by a creditor for access to such databases may be refused by the holder of the database if the information to be provided is prohibited by any other law, or is contrary to the public policy or public security of Malta.

(4) This regulation shall be without prejudice to the Data Protection Directive.

Annual percentage rate of charge. *Amended by: L.N. 266 of 2014. Substituted by: L.N. 259 of 2016.*

21. (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 period agreed 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 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 ESIS 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 ESIS, 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 where the borrowing rate is not capped, the information referred to in this sub-regulation shall be accompanied by a warning highlighting that the total cost of the credit to the consumer, shown by the annual percentage rate of charge, may change:

Provided further that this sub-regulation shall not apply to credit agreements where the borrowing rate is fixed for an initial period of at least five 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 ESIS.

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

Flexible and reliable markets. *Added by: L.N. 259 of 2016.*

21A. (1) The Director General shall ensure that appropriate mechanisms are in place in Malta to ensure that the claim against the security is enforceable by or on behalf of creditors.

(2) Creditors shall keep appropriate records concerning the types of immovable property accepted as a security as well as the related underwriting policies used in relation to credit agreements.

(3) The Director General shall take the necessary measures to ensure an appropriate statistical monitoring of the residential property market, including for market surveillance purposes, where appropriate by encouraging the development and use of specific price indexes which may be public or private or both.

Enforcement and monitoring. *Substituted by: L.N. 259 of 2016.*

22. (1) Without prejudice to the responsibilities and obligations of European regulatory authorities in accordance with the MCD, it shall be the responsibility of the competent authorities 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 and credit intermediaries in terms of these regulations, and ensure that there is compliance by them with the obligations identified under these regulations:

Provided that the allocation of tasks between the competent authorities and the European regulatory authorities in accordance with Article 34 of the MCD shall be without prejudice to Member States' competences in relation to fields not covered by the MCD in conformity with their obligations under European Union law.

(2) For the purposes of sub-regulation (1), the MFSA may:

(*a*) require a credit intermediary to take the necessary measures at an early stage to address relevant problems in circumstances where the credit

intermediary does not meet the requirements of these regulations or any Credit Intermediaries' Rules issued thereunder, or where the MFSA has evidence that the credit intermediary is likely to breach these regulations or any Credit Intermediaries' Rules issued thereunder, within the following twelve months; and

(*b*) require a credit intermediary to submit any information as the MFSA may determine, or as the MFSA may from time to time require, in such form and at such time or times or at such intervals or in respect of such period or periods as may be prescribed by the MFSA.

(3) Credit intermediaries shall submit to the MFSA any information which it may reasonably require in the exercise of its duties under these regulations and any Credit Intermediaries' Rules issued thereunder, and the MFSA may enquire into and ask for clarification of any information so submitted.

(4) The MFSA may also authorise an officer, employee, agent or inspector of the MFSA, on producing evidence of his authority, to require any credit intermediary to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify, being such information or documents as the MFSA may reasonably require for the performance of its functions under these regulations or any Credit Intermediaries' Rules made thereunder:

Provided that any such officer, employee, agent or inspector shall have the power to require the production of those documents from any person who appears to be in possession of them.

(5) The power under this regulation to require an intermediary or any other person to produce any documents includes the power -

(*a*) if the documents are produced, to take copies of them or extracts from them and to require that credit intermediary or person, or any other person who is a present or past officer of, or is or was at any time employed by or acting as an employee of, the credit intermediary in question, to provide an explanation of any of them; and

(*b*) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) Without prejudice to articles 4(2) and 17 of the Malta Financial Services Authority Act, the MFSA may provide any information submitted by a credit intermediary to the MFSA or to any of its officers, servants or agents, to the Director General without such an act being considered as a breach of any confidentiality or professional secrecy obligations in terms of national law. Cap. 330.

Investigations. *Added by: L.N. 259 of 2016.*

22A. (1) Any officer, employee or agent of the MFSA may, for the purposes of regulation 22(1), 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 MFSA may appoint one or more competent persons, as inspectors, to investigate and report on the nature, conduct or state of the credit intermediary'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 credit intermediary concerned, including:

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

(*b*) a subsidiary or a company which is a connected person of a holding company of that credit intermediary; or

(*c*) a holding company of a subsidiary of that credit intermediary; or

(*d*) a controller of that credit intermediary; or

(*e*) an outsourcing service provider of that credit intermediary.

(3) Where the MFSA 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 credit intermediary, 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 MFSA shall have the power to order that all expenses of, and incidental to, an investigation pursuant to this regulation be paid by the credit intermediary concerned.

Right of entry to obtain information and documents. *Added by: L.N. 259 of 2016.*

22B. (1) Any officer, employee, agent or inspector of the MFSA 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 22A 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 22A for the purpose of obtaining there such information or documents as may be specified by the MFSA, being information or documents that could have been required by such a notice:

Provided that the MFSA 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.

Suspected breaches. *Added by: L.N. 259 of 2016.*

22C. (1) Where the MFSA has reasonable grounds for suspecting that a person has contravened or has failed to comply with any provision of these regulations or any Credit Intermediaries' 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 MFSA 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 MFSA may, between five o'clock in the morning and nine o'clock at night, 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 that sub-regulation 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. *Added by: L.N. 259 of 2016.*

22D. 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.

22E. Every officer of a credit intermediary shall take all reasonable steps:

(*a*) to secure compliance by the credit intermediary with all of the provisions of these regulations or any Credit Intermediaries' Rules issued thereunder and of its admission in terms of these regulations; and

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

Supervision of credit intermediaries (Malta as home Member State). *Added by: L.N. 259 of 2016.*

22F. (1) Maltese credit intermediaries shall comply with these regulations and shall be subject to supervision of their ongoing activities by the competent authorities:

Provided that where Maltese credit intermediaries provide services within the territory of another Member State through the establishment of a branch:

(*a*) Maltese credit intermediaries shall, with respect to the services provided within the territory of the Member State concerned, comply with the obligations laid down in Articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 of the MCD and with any measures adopted pursuant thereto by the host Member State concerned; and

(*b*) the European regulatory authority of the host Member State concerned shall, in accordance with Article 34(3) of the MCD, have the right to examine branch arrangements and to request such changes as may be strictly needed to fulfil its obligations under Article 34(2) of the MCD and to enable the Director General to enforce the obligations under regulation 5(2), (3) and (4) and any measures adopted pursuant thereto by the Director General with respect to the services provided by the branch.

(2) Where Malta is the home Member State, the competent authorities shall determine on a case-by-case basis, whether tied credit intermediaries who are admitted in terms of these regulations and who act for and on behalf of a Maltese creditor, are to be subject to supervision directly or as part of the supervision of the creditor on behalf of which they act:

Provided that if such tied credit intermediaries provide services in another Member State, such tied credit intermediaries shall be subject to supervision directly.

(3) Where Malta is the home Member State, a European regulatory authority may, in accordance with Article 34(2) of the MCD, where it ascertains that a Maltese credit intermediary providing services within its territory through the establishment of a branch is in breach of the measures adopted in the relevant host Member State pursuant to regulations Articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 of the MCD, require the Maltese credit intermediary concerned to put an end to its irregular situation:

Provided that if the Maltese credit intermediary concerned fails to take the necessary steps, the European regulatory authority of the host Member State concerned may, in accordance with Article 34(2) of the MCD, take all appropriate action to ensure that the Maltese credit intermediary concerned puts an end to its irregular situation:

Provided further that in such cases, the European regulatory authority shall, in accordance with Article 34(2) of the MCD communicate the nature of any such action to the MFSA.

(4) In the event that, despite the action taken by the European regulatory authority of the host Member State concerned in accordance with Article 34(2) of the MCD, the Maltese credit intermediary persists in breaching the measures referred to in Article 34(2) of the MCD in force in the host Member State concerned, the European regulatory authority of the host Member State may, in accordance with Article 34(2) of the MCD, take appropriate action to prevent or to penalise further irregularities

and, in so far as necessary, to prevent the Maltese credit intermediary from initiating any further transactions within its territory:

Provided that where the MFSA or the Director General, as the case may be, disagrees with any such actions taken by the European regulatory authority of the host Member State concerned, the Director General may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(5) Where Malta is the home Member State and the European regulatory authority of a host Member State refers findings to the MFSA in accordance with Article 34(4) of the MCD, with respect to breaches by Maltese credit intermediaries acting under the freedom to provide services or the freedom of establishment in the host Member State concerned, of the obligations arising from the measures adopted pursuant to the MCD other than those specified in Article 34(2) of the MCD, the MFSA or the Director General, as the case may be, shall take appropriate action:

Provided that where the MFSA or the Director General, as the case may be, fail to take any such action within one month from obtaining those findings, or where, despite any such action taken by the MFSA or the Director General, as the case may be, the Maltese credit intermediary concerned persists in acting in a manner that is clearly prejudicial to the interests of the consumers of the relevant host Member State or the orderly functioning of the markets, the European regulatory authority of the host Member State concerned may, in accordance with Article 34(4) of MCD:

(*a*) after having informed the MFSA, take all appropriate action needed to protect consumers and ensure the proper functioning of the markets, including by preventing the offending Maltese credit intermediary form initiating any further transactions within the territory of the host Member State;

(*b*) refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(6) The MFSA shall forward to the Director General any information received from European regulatory authorities of host Member States in accordance sub-regulations (3) and (5).

(7) Where Malta is the home Member State and a Maltese credit intermediary provides services within the territory of another Member State through the establishment of a branch, the MFSA and the Director General may, in the exercise of their responsibilities and in accordance with Article 34(5) of the MCD, carry out on-site inspections in that branch:

Provided that such on-site inspections shall only be carried out following a notification by the MFSA to the European regulatory authority of the host Member State concerned.

(8) For the purposes of this regulation, the Director General and the MFSA shall collaborate closely and shall cooperate

whenever necessary, including by exchanging all the necessary information in order for such competent authorities to be able to fulfil their respective duties, responsibilities and obligations.

Supervision of credit intermediaries (Malta as host Member State). *Added by: L.N. 259 of 2016.*

22G. (1) Branches in Malta of European credit intermediaries shall comply with the obligations laid down in regulations 4A, 5(1), 6, 7, 7A, 8, 8A, 8B, 12A, 19, 21 and 24A and with any measures adopted pursuant thereto by the MFSA and, or the Director General, as the case may be, and shall be subject to supervision by such competent authorities of their ongoing activities with respect to such obligations and measures:

Provided that where Malta is the host Member State, the MFSA and, or the Director General, as the case may be, shall also have the right to examine branch arrangements and to request such changes as are strictly needed to fulfil their responsibilities under Article 34(2) of the MCD and to enable the European regulatory authority of the home Member State concerned to enforce the obligations under Articles 7(2), (3) and (4) of the MCD and any measures adopted pursuant thereto by the home Member State concerned with respect to the services provided by the branch of the European credit intermediary.

(2) Where Malta is the host Member State and the MFSA and, or the Director General, as the case may be, ascertain that a European credit intermediary providing services in Malta through the establishment of a branch is in breach of the measures adopted in Malta pursuant to regulations 4A, 5(1), 6, 7, 7A, 8, 8A, 8B, 12A, 19, 21 and 24A, such competent authorities shall require the European credit intermediary concerned to put an end to its irregular situation.

(3) In the event that a European credit intermediary providing its services in Malta through the establishment of a branch fails to take the necessary steps following a request made by the MFSA and, or the Director General, as the case may be, in accordance with sub-regulation (2), such competent authorities shall take appropriate action to ensure that the European credit intermediary concerned puts an end to its irregular situation:

Provided that the MFSA shall communicate the nature of such action to the European regulatory authority of the home Member State concerned.

(4) In the event that, despite the action taken by the MFSA and, or the Director General, as the case may be, in accordance with sub-regulation (3), the European credit intermediary concerned persists in breaching the measures referred to in sub-regulation (2), the MFSA and, or the Director General, as the case may be, may take appropriate action to prevent or to penalise further irregularities and, in so far as necessary, to prevent the European credit intermediary form initiating any further transactions in Malta:

Provided that in any such case, the MFSA shall:

(*a*) before any appropriate action is taken by the MFSA and, or the Director General, as the case may be, in

accordance with this sub-regulation, inform the European regulatory authority of the home Member State concerned;

(*b*) inform the European Commission of any such action without undue delay:

Provided further that where the European regulatory authority of the home Member State concerned disagrees with any such action taken by the MFSA and, or the Director General, as the case may be, the European regulatory authority concerned may, in accordance with Article 34(2) of the MCD, refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(5) Where Malta is the host Member State and the MFSA and, or the Director General, as the case may be, have clear and demonstrable grounds for concluding that a European credit intermediary acting within its territory under the freedom to provide services is in breach of the obligations arising from the measures adopted pursuant to the provisions of these regulations transposing the MCD, or that a European credit intermediary that has a branch in Malta is in breach of the obligations arising from the measures adopted pursuant to the provisions of these regulations transposing the MCD other than those specified in Article 34(2) of the MCD, the MFSA shall refer those findings to the European regulatory authority of the home Member State concerned, which shall, in accordance with Article 34(4) of the MCD, take appropriate action.

(6) In the event that the European regulatory authority of the home Member State concerned fails to take any action in accordance with Article 34(4) the MCD, or where, despite the action taken by the European regulatory authority of the home Member State concerned, the European credit intermediary concerned persists in acting in a manner that is clearly prejudicial to the interests of Maltese consumers or orderly functioning of the markets:

(*a*) the MFSA and, or the Director General, as the case may be, shall take all appropriate action needed to protect consumers and ensure the proper functioning of the markets, including by preventing the defaulting European credit intermediary from initiating any further transactions in Malta:

Provided that prior to taking any such action, the MFSA shall inform the European regulatory authority of the home Member State concerned:

Provided further that the MFSA shall inform the European Commission and the EBA of any action taken by the MFSA and, or the Director General, as the case may be, in accordance with this paragraph without undue delay;

(*b*) the MFSA may refer the matter to the EBA and request its assistance in accordance with Article 19 of

Regulation (EU) No 1093/2010.

(7) Where Malta is the host Member State and a European credit intermediary provides services in Malta through the establishment of a branch, the European regulatory authority of the home Member State may, in accordance with Article 34(5) of the MCD, in the exercise of its responsibilities and after having informed the MFSA, carry out on-site inspections in that branch:

Provided that the MFSA shall forward to the Director General any information received from the European regulatory authority concerned in accordance with Article 34(5) of the MCD.

(8) For the purposes of this regulation, the Director General and the MFSA shall collaborate closely and shall cooperate whenever necessary, including by exchanging all the necessary information in order for such competent authorities to be able to fulfil their respective duties, responsibilities and obligations.

Obligation to cooperate. *Added by: L.N. 259 of 2016.*

22H. (1) The MFSA shall cooperate with European regulatory authorities whenever necessary for the purpose of carrying out its duties under the provisions of the MCD, making use of its powers, whether set out in these regulation or in any other law.

(2) The MFSA shall render assistance to European regulatory authorities and shall, in particular, exchange information and cooperate in any investigation or supervisory activities:

Provided that in order to facilitate such assistance, the MFSA shall take the necessary administrative and organisational measures:

Provided further that where a European regulatory authority requests the cooperation of the MFSA, in particular the exchange of information, and the MFSA rejects the request or does not act upon it within a reasonable time, the European regulatory authority concerned may, in accordance with Article 37 of the MCD, refer the situation to the EBA and request the EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(3) The MFSA shall communicate to the European Commission and to the other Member States its name and contact details as the authority which, in accordance with regulation 3A(1), has been designated as the single contact point for the purposes of the MCD and to receive requests for exchange of information or cooperation pursuant to Article 36(1) of the MCD.

(4) The MFSA shall without undue delay supply European regulatory authorities with the information required for the purposes of carrying out their duties set out in the measures adopted pursuant to the MCD.

(5) The MFSA may, when exchanging information with European regulatory authorities, indicate at the time of communication that such information must not be disclosed without its express agreement:

Provided that in such case, such information may, in accordance with Article 36(3) of the MCD be exchanged solely for the purposes for which the MFSA gave its agreement:

Provided further that the European regulatory authority receiving this information from the MFSA may, in accordance with Article 36(3) of the MCD, transmit such information received to other authorities designated as competent in its Member State in accordance with Article 5 of the MCD, solely for the purposes for which the MFSA gave its agreement, and shall not, in accordance with Article 36(3) of the MCD, transmit the information to other bodies or natural or legal persons without the express agreement of the MFSA, except in duly justified circumstances:

Provided further that in the event of such circumstances, the European regulatory authority shall, in accordance with Article 36(3) of the MCD, immediately inform the MFSA.

(6) Where the MFSA receives information from a European regulatory authority and at the time of the communication the European regulatory authority concerned indicates that such information must not be disclosed without its express agreement, the MFSA may only exchange such information solely for the purposes for which the European regulatory authority concerned gave its agreement:

Provided that the MFSA may transmit the information received to the Director General solely for the purposes for which the European regulatory authority concerned gave its agreement, and shall not transmit the information to other bodies or natural or legal persons without the express agreement of the European regulatory authority concerned, except in duly justified circumstances:

Provided further that in the event of such circumstances, the MFSA shall immediately inform the European regulatory authority that supplied the information.

(7) The MFSA may refuse to act on a request for cooperation in carrying out an investigation or supervisory activity or to exchange information as provided for in Article 36(3) of the MCD only where:

(*a*) such an investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect the sovereignty, security or public policy of Malta;

(*b*) judicial proceedings have already been initiated in respect of the same actions and the same persons before Maltese authorities;

(*c*) final judgement has already been delivered in Malta, addressed in respect of the same persons and the same actions:

Provided that in the event of such a refusal, the MFSA shall notify the requesting European regulatory authority accordingly, providing as detailed information as possible.

(8) For the purposes of this regulation, the Director General and the MFSA shall collaborate closely and shall cooperate whenever necessary, including by exchanging all the necessary

information in order for the competent authorities to be able to fulfil their respective duties, responsibilities and obligations.

Settlement of disagreements between European regulatory authorities and the competent authorities. *Added by: L.N. 259 of 2016.*

22 I. (1) Where a request for cooperation, in particular the exchange of information, by the MFSA to a European regulatory authority has been rejected or has not been acted upon within a reasonable time by the European regulatory authority concerned, the MFSA may refer the situation to the EBA and request the EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(2) Any binding decision made by the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 further to a request by the MFSA in accordance with sub-regulation (1), or a request by a European regulatory authority made in accordance with Article 37 of the MCD, shall be binding on the competent authorities and, in accordance with Article 37 of the MCD, on the European regulatory authority concerned and on any other authorities designated as competent in the Member State concerned in accordance with Article 5 of the MCD, regardless of whether such authorities are members of the EBA or not.

Investigations, judicial proceedings, penalties and the right of appeal *Amended by: L.N. 259 of 2016; Substituted by: XVI.2019.72.*

23. (1) Without prejudice to the provisions of regulation 23A, the Director General shall proceed according to article 12 of the Act and where, upon the conclusion of an investigation, it appears *prima facie* to the Director General, that an infringement of these regulations has occurred, the Director General shall institute judicial proceedings against the person concerned before the Civil Court by means of a sworn application and the provisions of Part IIA of the Act shall apply to these judicial proceedings.

(2) Subject to the provisions of Part IIA of the Act, the Civil Court, in its judgement, shall impose a penalty and issue such order, or take such measure as it may deem appropriate in terms of the Act, upon any person who contravenes or fails to comply with any of the provisions of these regulations:

Provided that the MFSA shall not, through these judicial proceedings or through any other procedures, request the imposition of a penalty in respect of the same infringement.

(3) Any person who contravenes any provision of these regulations shall be guilty of an infringement punishable by a penalty of not less than one thousand euro (€1,000) and not exceeding forty-five thousand euro (€45,000).

(4) In the case of non-compliance with a compliance order, the Civil Court shall also impose a daily penalty of not less than one hundred and thirty euro (€130) and not more than two hundred and thirty euro (€230) for each day of non-compliance.

(5) In determining the amount of the penalty specified in this regulation, the Civil Court shall be guided by the following

considerations:

(*a*) for infringements under these regulations, the basic amount of the penalty shall be twenty thousand euro (€20,000):

Provided that the Civil Court may, in setting the penalty, take into account circumstances that may lead to an increase or decrease in the basic amount:

Provided further that the Civil Court shall do so on the basis of an overall assessment which takes into account all the relevant circumstances, including the value of the credit under the credit agreement and the turnover of the creditor;

(*b*) the Civil Court may impose a higher penalty than the basic amount where there are aggravating circumstances, having regard, in particular, to the gravity and duration of the infringement and, or to the amount of gains improperly made as a result of the infringement;

(*c*) without prejudice to the generality of paragraph (b), the following shall in all cases be deemed as aggravating circumstances:

(i) a second or subsequent infringement;

(ii) where the infringement constitutes an unfair commercial practice in terms of the Act; and

(*d*) the basic amount may be decreased where the Civil Court finds that there are mitigating circumstances in particular:

(i) where the creditor or the credit intermediary, as the case may be, provides evidence that he terminated the infringement concerned prior to or as soon as the Director General commenced an investigation;

(ii) where the creditor or the credit intermediary, as the case may be, provides evidence that he has taken adequate steps to reduce the negative effects of the infringement.

Cap. 510.

(6) In discharging his functions under these regulations, the Director General shall have the same powers as prescribed under the Act except where competences are assigned to the Civil Court by the Act and by the Malta Competition and Consumer Affairs Authority Act.

(7) Any person who feels aggrieved by a judgement, order,

penalty or measure issued by the Civil Court, may appeal before the Court of Appeal, on any point of law and, or of fact, by means of an application filed in the registry of the Court of Appeal within twenty days from the date of the judgment of the Civil Court:

Provided that the Court of Appeal shall appoint the case for hearing by not later than six months from the judgement of the Civil Court.

Administrative penalties - powers of the MFSA. *Added by: L.N. 259 of 2016. Amended by: XVI.2019.72; L.N. 167 of 2022.*

23A. (1) Without prejudice to the provisions of regulation 23, where a credit intermediary fails to comply with any of the conditions imposed in an admission, and, or where the MFSA is satisfied that a person's conduct amounts to a breach of any of the provisions of these regulations transposing the MCD, or any Credit Intermediaries' Rules issued thereunder, or such person has failed to comply with a directive issued by the MFSA under these regulations, the MFSA may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty of not less than one thousand euro (€1,000) and not exceeding forty-five thousand euro (€45,000):

Provided that in determining the amount of the administrative penalty referred to in this sub-regulation, the MFSA shall be guided by the considerations referred to in regulation 23(4):

Provided that the Director General shall not in any manner request the imposition of a penalty in respect of the same act or omission.

(2) Where the MFSA decides to impose an administrative penalty, it shall notify the person on whom the administrative penalty 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 MFSA the amount of the administrative penalty within a period of thirty days of the service of the notice, and fails to appeal from the decision of the MFSA to the Financial Services Tribunal; or

(*b*) appeals to the Financial Services Tribunal and fails within a period of fifteen days from the decision of the said Tribunal to pay the administrative penalty as confirmed or as reduced by that Tribunal,

then, in every case, the amount of the administrative penalty, as originally imposed or as reduced, as the case may be, shall be due to the MFSA 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 MFSA.
Added by: L.N. 259 of 2016.

Cap. 330.

23B. Any person who feels aggrieved by a decision and, or measure taken by the MFSA pursuant to these regulations or any Credit Intermediaries' Rules issued thereunder, 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.

Publication of administrative penalties.
Added by: L.N. 259 of 2016.
Amended by: L.N. 167 of 2022.

23C. (1) The MFSA may publish, on its official website and, or in any other media as it considers appropriate, any administrative penalties 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 penalty is imposed, without undue delay after that person is informed of those penalties:

Provided that the MFSA shall not publish any administrative penalties imposed under the provisions of these regulations where such publication would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved:

Provided further that in cases where an administrative penalty or penalties imposed under the provisions of these regulations have been published in terms of this sub-regulation and an appeal has been filed by the person on whom such administrative penalty or penalties have been imposed, the MFSA 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 MFSA for a period of not less than five years. Personal data shall be retained on the official website of the MFSA and in any other media it considers appropriate only for the period necessary, in accordance with the provisions of Maltese legislation on data protection.

Regulations to prevail.
Amended by: L.N. 259 of 2016.

24. (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 credit agreements 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 non-Member State, the protection granted by these regulations shall continue to apply where the credit agreement has a close link with Malta or any other Member State.

Dispute resolution mechanism. *Added by: L.N. 259 of 2016.*

24A. (1) The Director General shall ensure that appropriate and effective complaints and redress procedures are established for the out of-court settlement of consumer disputes with creditors and credit intermediaries in relation to credit agreements, using existing bodies where appropriate. The Director General shall also ensure that such procedures are applicable to creditors and credit intermediaries and cover the activities of appointed representatives.

(2) The bodies responsible for the out-of-court settlement of consumer disputes to shall cooperate with bodies responsible for the out-of-court settlement of consumer disputes in other Member State so that cross-border disputes concerning credit agreements can be resolved.

Saving.

25. Agreements entered into under the Consumer Credit Regulations, 2005*, before their revocation, shall remain in force and be regulated by the terms and conditions applicable thereto.

Transitional provisions. *Added by: L.N. 259 of 2016. Amended by: L.N. 86 of 2018.* L.N. 259 of 2016.

25A. (1) The provisions of these regulations as amended by means of the Home Loan (Amendment) Regulations shall not apply to credit agreements existing before the coming into force of the said regulations.

(2) Credit intermediaries already carrying out credit intermediation activities in terms of the definition "credit intermediary" in regulation 2 before the coming into force of these regulations and which have not yet been admitted in terms of these regulations may continue to carry out those activities in compliance with national law until 21 March 2017:

Provided that where a Maltese credit intermediary relies on this derogation, unless it also satisfies the necessary legal requirements of the host Member States, it may only perform its activities in Malta.

(3) Creditors and credit intermediaries performing activities regulated by these regulations before 20 March 2014 shall comply with the sub-regulations (1) to (9) of regulation 6 by 21 March 2017.

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*revoked by these Regulations.

Amended by:
L.N. 266 of 2014.
Re-numbered and substituted by:
L.N. 259 of 2016.

FIRST SCHEDULE

[Regulation 7(1) and (2)]

EUROPEAN STANDARDISED INFORMATION SHEET (ESIS)

PART A

The text in this model shall be reproduced as such in the ESIS. Indications between square brackets shall be replaced with the corresponding information. Instructions for the creditor or, where applicable, credit intermediary on how to complete the ESIS are provided in Part B.

Wherever the words 'where applicable' are indicated, the creditor shall provide the information required if it is relevant to the credit agreement. Where the information is not relevant, the creditor shall delete the information in question or the entire section (for example, in cases where the section is not applicable). Where the entire section is deleted, the numbering of the ESIS sections shall be adjusted accordingly.

The information below shall be provided in a single document. The font used shall be clearly readable. Bold font, shading or larger font sizes shall be used for the information elements to be highlighted. All applicable risk warnings shall be highlighted.

ESIS Model

(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.

(Where applicable) 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 mortgage./We are not recommending a particular mortgage for you. However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice.)]

2. (Where applicable) Credit intermediary

[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 mortgage./We are not recommending a particular mortgage for you. However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice.)]

[Remuneration]

3. Main features of the loan

Amount and currency of the loan to be granted: [value] [currency]

(Where applicable) This loan is not in [national currency of the borrower].

(Where applicable) The value of your loan in [national currency of the borrower] could change.

(Where applicable) For example, if the value of [national currency of the borrower] fell by 20% relative to [credit currency], the value of your loan would increase to [insert amount in national currency of the borrower]. However, it could be more than this if the value of [national currency of the borrower] falls by more than 20%.

(Where applicable) The maximum value of your loan will be [insert amount in national currency of the borrower]. (Where applicable) You will receive a warning if the credit amount reaches [insert amount in national currency of the borrower]. (Where applicable) You will have the opportunity to [insert right to renegotiate foreign currency loan or right to convert loan into [relevant currency] and conditions].

Duration of the loan: [duration]

[Type of loan]

[Type of applicable interest rate]

Total amount to be reimbursed:

This means that you will pay back [amount] for every [unit of the currency] borrowed.

(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 mortgage 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]

(Where applicable) [Security]

4. 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 mortgage. [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 contract.

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

(Where applicable) You will need to pay a fee to register the mortgage.

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

5. Frequency and number of payments

Repayment frequency: [frequency]

Number of payments: [number]

6. Amount of each instalment

[Amount] [currency]

Your income may change. Please consider whether you will still be able to afford your [frequency] repayment instalments if your income falls.

(Where applicable) Because [this/part of this] is an interest-only loan you will need to make separate arrangements to repay the [insert amount of loan on an interest-only basis] you will owe at the end of the mortgage term. Remember to add any extra payments you will need to make to the instalment amount shown here.

(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) The value of the amount you have to pay in [national currency of the borrower] each [frequency of instalment] could change. (Where applicable) Your payments could increase to [insert maximum amount in national currency of the borrower] each [insert period]. (Where applicable) For example, if the value of [national currency of the borrower] fell by 20% relative to [credit currency] you would have to pay an extra [insert amount in national currency of the borrower] each [insert period]. Your payments could increase by more than this.

(Where applicable) The exchange rate used for converting your repayment in [credit currency] to [national currency of the borrower] will be the rate published by [name of institution publishing exchange rate] on [date] or will be calculated on [date] using [insert name of benchmark or method of calculation].

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

7. (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.]), where applicable, capital 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]. Outstanding capital (column [relevant no.]) is the amount of the loan that remains to be reimbursed after each instalment.

[Table]

8. 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]

9. 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.

10. Flexible features

(Where applicable) [Information on portability/subrogation] You have the possibility to transfer this loan to another [lender][or] [property]. [Insert conditions]

(Where applicable) You do not have the possibility to transfer this loan to another [lender] [or] [property].

(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 credit agreement not referred to in previous sections].

11. 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 loan. (Where applicable) Once you have received the credit contract 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].

12. 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.

13. 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.

(Where applicable)

14. Additional information

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

(Where the lender intends to use a language different from the language of the ESIS) Information and contractual terms will be supplied in [language]. With your consent, we intend to communicate in [language/s] during the duration of the credit agreement.

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

15. Supervisor

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

(Where applicable) This credit intermediary is supervised by [Name and web address of supervisory authority].

PART B

Instructions to complete the ESIS

In completing the ESIS, at least the following instructions shall be followed. Member States may however elaborate or further specify the instructions for completing the ESIS.

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 ESIS 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) Where Section 2 is not applicable, the creditor shall inform the consumer whether advisory services are being provided and on what basis using the wording in Part A.

(Where applicable) Section '2. Credit intermediary'

Where the product information is being provided to the consumer by a credit intermediary, that intermediary shall include the following information:

(1) Name, telephone number and geographical address of the credit intermediary 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) The credit intermediary shall inform the consumer whether advisory services are being provided and on what basis using the wording in Part A.

(4) An explanation of how the credit intermediary is being remunerated. Where it is receiving commission from a creditor, the amount and, where different from the name in Section 1, the name of the creditor shall be provided.

Section '3. Main features of the loan'

(1) This section shall clearly explain the main characteristics of the credit,

including the value and currency and the potential risks associated with the borrowing rate, including the ones referred to in sub-paragraph (8), and amortisation structure.

(2) Where the credit currency is different from the national currency of the consumer, the creditor shall indicate that the consumer will receive a regular warning at least when the exchange rate fluctuates by more than 20%, where applicable the right to convert the currency of the credit agreement or to the possibility to renegotiate the conditions and any other arrangements available to the consumer to limit their exposure to exchange rate risk. Where there is a provision in the credit agreement to limit the exchange rate risk, the creditor shall indicate the maximum amount the consumer could have to pay back. Where there is no provision in the credit agreement to limit the exchange rate risk to which the consumer is exposed to a fluctuation in the exchange rate of less than 20%, the creditor shall indicate an illustration of the effect of a 20% fall in the value of consumer's national currency relative to the credit currency on the value of the credit.

(3) The duration of the credit shall be expressed in years or months, whichever is the most relevant. Where the duration of the credit can vary during the lifetime of the contract, the creditor shall explain when and under which conditions this can occur. Where the credit is open-ended, for example, for a secured credit card, the creditor shall clearly state that fact.

(4) The type of credit shall be clearly indicated (e.g. mortgage credit, home loan, secured credit card). The description of the type of credit shall clearly indicate how the capital and the interest shall be reimbursed during the life of the credit (i.e. the amortisation structure), specifying clearly whether the credit agreement is on capital repayment or interest-only basis, or a mixture of the two.

(5) 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.

(6) 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.

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.

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

(8) 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.

(9) Where the credit will be secured by a mortgage on the immovable property or another comparable security or by a right related to immovable property, the creditor shall draw the consumer's attention to this. Where applicable the creditor shall indicate the assumed value of the immovable property or other security used for the purpose of preparing this information sheet.

(10) 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'.

(11) 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.

Section '4. 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 ESIS.

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. In order to attract the consumer's attention the font size used for the warning shall be bigger and shall figure prominently in the main body of the ESIS. The warning shall be accompanied by an illustrative example on the APRC. Where 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. Where there is no cap the example shall illustrate the APRC at the highest borrowing rate in at least the last 20 years, or where the underlying data for the calculation of the borrowing rate is available for a period of less than 20 years the longest period for which such data is available, based on the highest value of any external reference rate used in calculating the borrowing rate where applicable or the highest value of a benchmark rate specified by a competent authority or EBA where the creditor does not use an external reference rate. 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 21(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) 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 duration of the credit agreement and 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 Annex I, 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.

(4) Where a fee is payable for registration of the mortgage or comparable security 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 '5. 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 '6. Amount of each instalment'

(1) The credit currency and currency of the instalments shall be clearly indicated.

(2) 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.

(3) 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 mortgage or another comparable security, the amount and frequency of any payments for this product shall be provided.

(4) 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. Where there is a cap, the illustration shall show the amount of the instalments if the borrowing rate rises to the level of the cap. Where there is no cap, the worst case scenario shall illustrate the level of instalments at the highest borrowing rate in the last 20 years, or where the underlying data for the calculation of the borrowing rate is available for a period of less than 20 years the longest period for which such data is available, based on the highest value of any external reference rate used in calculating the borrowing rate where applicable, or the highest value of a benchmark rate specified by a competent authority or EBA where the creditor does not use an external reference rate. 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.

(5) (Where applicable) Where the credit currency is different from the consumer's national currency or where the credit is indexed to a currency which is different from the consumer's national currency, the creditor shall include a numerical example clearly showing how changes to the relevant exchange rate may affect the amount of the instalments using the wording in Part A. That example shall be based on a 20% reduction in the value of the consumer's national currency together with a prominent statement that the instalments could increase by more than the amount assumed in that example. Where there is a cap which limits that increase to less than 20%, the maximum value of the payments in the consumer's currency shall be given instead and the statement on the possibility of further increases omitted.

(6) Where the credit is fully or partly a variable rate credit and paragraph 3 applies, the illustration in paragraph 5 shall be given on the basis of the instalment amount referred to in paragraph 1.

(7) Where the currency used for the payment of instalments is different from the credit currency or where the amount of each instalment expressed in the consumer's national currency depends on the corresponding amount in a different currency, this section shall indicate the date at which the applicable exchange rate is calculated and either the exchange rate or the basis on which it will be calculated and the frequency of their adjustment. Where applicable such indication shall include the name of institution publishing the exchange rate.

(8) 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 their remaining debt.

Section '7. 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. Member States may provide that the illustrative amortisation table is compulsory in other cases.

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) Member States may require that 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.

(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', 'other costs included in the instalment' (where relevant), 'capital repaid per instalment' and 'outstanding capital after each instalment'.

(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 '8. Additional obligations'

(1) The creditor shall refer in this section to obligations such as the obligation to insure the immovable property, to purchase life insurance, to have a salary 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 credit 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 credit agreement 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 credit agreement 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 credit agreement.

Section '9. 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 '10. Flexible features'

(1) Where applicable, the creditor shall explain the possibility to and conditions for transferring the credit to another creditor or 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 mortgage or comparable security 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 mortgage or comparable security); whether the additional credit is secured or not; the relevant borrowing rates; and whether it is regulated or not. Such additional credit amount shall either be included in the original creditworthiness assessment or, if it is not, this section shall make clear that the availability of the additional amount is dependent on a further assessment of the consumer's ability to repay.

(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]; 'Borrow back' [ability for the consumer to borrow again funds already drawn down and repaid]; '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 credit agreement not mentioned in previous sections.

Section '11. 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 '12. 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 credit agreements with a consumer who is resident in another Member State, the creditor shall refer to the existence of FIN-NET (http://ec.europa.eu/internal_market/fin-net/).

Section '13. 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 8 '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, using the wording in Part A.

Section '14. Additional information'

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

(2) Where the creditor intends to communicate with the consumer during the life of the contract in a language different from the language of the ESIS that fact shall be included and the language of communication named. This is without prejudice to sub-paragraph (g) of sub-paragraph 3 of paragraph 1 of Article 3 of Directive 2002/65/EC.

(3) The creditor or credit intermediary 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 '15. Supervisor'

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

Amended by:
L.N. 259 of 2016.

SECOND SCHEDULE

[Regulation 21]

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 APR,

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,

S l 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*) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 170 000. In the case of credit agreements - other than contingent liabilities or guarantees - the purpose of which is not to acquire or retain a right in immovable property or land, overdrafts, deferred debit cards or credit cards this ceiling is assumed to be EUR 1,500.

(*g*) In the case of credit agreements other than overdrafts, bridging loans, shared equity credit agreements, contingent liabilities or guarantees and open-ended credit agreements as referred to in the assumptions set out in sub-paragraphs (*i*), (*j*), (*k*), (*l*) and (*m*):

(i) if the date or amount of a repayment of capital to be made by the consumer cannot be ascertained, it shall be assumed that the repayment is made at the earliest date provided for in the credit agreement and is for the lowest amount for which the credit agreement provides;

(ii) 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.

(*h*) Where the date or amount of a payment to be made by the consumer cannot be ascertained on the basis of the credit agreement or the assumptions set out in sub-paragraphs (*g*), (*i*), (*j*), (*k*), (*l*) and (*m*) it shall be assumed that the payment is made in accordance with the dates and conditions required by the creditor and, when these are unknown:

(i) interest charges are paid together with the repayments of the capital;

(ii) non-interest charges expressed as a single sum are paid at the date of the conclusion of the credit agreement;

(iii) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall be assumed to be equal amounts;

(iv) the final payment clears the balance of capital, interest and other charges, if any.

(*i*) In the case of an overdraft facility, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the overdraft facility is not known, the APRC shall be calculated on the assumption that the duration of the credit is three months.

(*j*) In the case of a bridging loan, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the credit agreement is not known the APRC shall be calculated on the assumption that the duration of the credit is 12 months.

(*k*) In the case of an open ended credit agreement, other than an overdraft facility and bridging loan, it shall be assumed that:

(i) for credit agreements, the purpose of which is to acquire or retain rights in immovable property the credit is provided for a period of 20 years starting from the date of the initial drawdown, and that the final payment made by the consumer clears the balance of capital, interest and other charges, if any; in the case of credit agreements the purpose of which is not to acquire or retain rights in immovable property or which are drawn down by deferred debit cards or credit cards, this period shall be of one year;

(ii) the capital is repaid by the consumer in equal monthly payments, commencing one month after the date of the initial drawdown. However, in cases where the capital must be repaid only in full, in a single payment, within each payment period, successive drawdowns and repayments of the entire capital by the consumer shall be assumed to occur over the period of one year. Interest and other charges shall be applied in accordance with those drawdowns and repayments of capital and as provided for in the credit agreement.

For the purposes of this paragraph, an open-ended credit agreement is a credit agreement without fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

(*l*) In the case of contingent liabilities or guarantees, the total amount of credit shall be deemed to be drawn down in full as a single amount at the earlier of:

(i) the latest draw down date permitted under the credit agreement being the potential source of the contingent liability or guarantee; or

(ii) in the case of a rolling credit agreement at the end of the initial period prior to the rollover of the agreement.

(*m*) In the case of shared equity credit agreements:

(i) the payments by consumers shall be deemed to occur at the latest date or dates permitted under the credit agreement;

(ii) percentage increases in value of the immovable property which secures the shared equity credit agreement, and the rate of any inflation index referred to in the agreement, shall be assumed to be a percentage equal to the higher of the current central bank target inflation rate or the level of inflation in the Member State where the immovable property is located at the time of conclusion of the credit agreement or 0% if those percentages are negative.

Added by: L.N. 259 of 2016.

THIRD SCHEDULE

[Regulations 6 and 18A]

Minimum Knowledge and Competence Requirements

1. The minimum knowledge and competence requirements for creditors' and credit intermediaries' staff referred to in regulation 6 and for persons involved in the management of credit intermediaries referred to in regulation 18A(7)(*c*) shall include:

(*a*) appropriate knowledge of credit 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 credit agreements 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 market in Malta;

(*g*) appropriate knowledge of business ethics standards;

(*h*) appropriate knowledge of the consumer's creditworthiness assessment process or, where applicable, competence in assessing the consumer's creditworthiness;

(*i*) appropriate level of financial and economic competency.

2. When establishing minimum knowledge and competence requirements, the MFSA may differentiate between the levels and types of requirements applicable to the staff of creditors, the staff of credit intermediaries and the management of credit intermediaries.

3. The MFSA 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, distribution or intermediation of credit products:

Provided that after 21 March 2019, the determination of the appropriate level of knowledge and competence shall not be based solely on the methods listed in sub-paragraph (*b*) of the paragraph 1.

Added by:
XLIV.2021.25.
Amended by:
L.N. 18 of 2024.

FOURTH SCHEDULE
(Regulation 17C)

Guidelines on the requirements regarding arrears and enforcement

Guideline 1: Establishment of policies and procedures

1.1 The creditor should establish, and keep up to date, procedures to detect, as early as possible, consumers going into payment difficulties.

1.2 The creditor should establish, and keep up to date, policies and procedures for the effective handling of and engagement with consumers in payment difficulties. The consumer engagement policy should include that the creditor provides adequate information, for example, through websites and written materials, and support for consumers in payment difficulties.

1.3 The creditor should provide adequate training for staff dealing with consumers in payment difficulties.

Guideline 2: Engagement with the consumer

2.1 When a consumer goes into payment difficulties, the creditor should work with the consumer to establish why the difficulties have arisen and for the creditor to take appropriate steps.

2.2 Any interaction by the creditor with the consumer in relation to their payment difficulties should respect the consumer's privacy.

2.3 The creditor, as well as any agents acting on behalf of the creditor, should maintain a level of contact and communication with a consumer in payment difficulties that is proportionate to the information requirements, and not excessive.

Guideline 3: Provision of information and assistance to the consumer

3.1 The creditor should communicate clearly and in plain language.

3.2 The creditor should provide support and, at least, the following information to consumers in payment difficulties:

(a) the number of payments either missed or only paid in part;

(b) the total sum of the payment shortfall;

(c) the charges incurred as a result of the payment shortfall;

(d) the importance of the consumer co-operating with the creditor to resolve the situation.

3.3 In cases where the consumer's payment difficulties persist, the creditor should

provide the following information to the consumer:

(a) information regarding the consequences of missing payments (e.g. costs, default interest rate, possible loss of property, etc.); and

(b) information about available government/public schemes or support.

Guideline 4: Resolution process

4.1 The creditor should take into account the individual circumstances of the consumer, the consumer's interests and rights and his/her ability to repay when deciding on which steps or forbearance measures to take. Forbearance measures may include one or both of the following concessions to the consumer:

1. A total or partial refinancing of a credit agreement;

2. A modification of the previous terms and conditions of a credit agreement, which may include among others:

(a) extending the term of the mortgage;

(b) changing the type of the mortgage (such as, changing the type of mortgage from a capital and interest mortgage to an interest only mortgage);

(c) deferring payment of all or part of the instalment repayment for a period;

(d) changing the interest rate;

(e) offering a payment holiday.

Guideline 5: Documentation of dealings with the consumer and retention of records

5.1 The creditor should document the reasons why the option(s) offered to the consumer are appropriate for his/her individual circumstances and should make and retain adequate records of its dealings with the consumer in payment difficulties for a reasonable period of time.