

L.N. 415 of 2011

**CONSUMER AFFAIRS ACT
(CAP. 378)**

Home Loan Regulations, 2011

IN exercise of the powers conferred upon him by article 7 of the Consumer Affairs Act, the Prime Minister, after consultation with the Consumer Affairs Council, has made the following regulations:-

PART I

PRELIMINARY

1. (1) The title of these regulations is the Home Loan Regulations, 2011. Citation and Commencement.

(2) These regulations shall come into force on 1st January 2012.

PART II

DEFINITIONS

2. For the purpose of these regulations:- Definitions.

“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;

“ancillary service” means a financial service offered to the consumer by the creditor or credit intermediary in conjunction with the home loan agreement;

“annual percentage rate of charge” means the total cost of the credit to the consumer expressed as an annual percentage of the total amount of the credit granted and where applicable including the costs referred to in regulation 8 of these regulations.

“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;

“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;

“creditor” means a natural or legal person who grants or promises to grant credit in connection with home loan agreements within the meaning of regulation 3 in the course of his trade, business or profession;

“credit intermediary” means a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration:

(a) presents or offers home loan agreements to consumers;

(b) assists consumers by undertaking preparatory work in respect of home loan agreements other than as referred to in paragraph (a) above; or

(c) concludes home loan agreements with consumers on behalf of the creditor;

“creditworthiness assessment” means the fair evaluation of a consumer’s ability to meet his debt obligations;

“the Director General” means the Director General of 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;

“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;

“home loan agreement” means an agreement whereby a creditor, directly or through a credit intermediary, grants or promises to grant, to a consumer, a credit within the meaning of regulation 3 of these regulations in the form of a deferred payment or other similar financial arrangement;

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

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

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

“total amount payable by the consumer” means the sum of the total amount of the credit and the total cost of the 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 home loan agreement and which are known to the creditor, except for notarial costs;

PART III

SCOPE AND APPLICATION

3. (1) These regulations shall apply to the following:

Scope and application.

(a) Home loan agreements whereby a consumer acquires or retains property rights in land or in an existing

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or projected building for his own residence or that of his dependants, which is secured either by a hypothec or by another comparable security on immovable property or by a surety.

(b) Home loan agreements whereby a consumer reconstructs, renovates, alters or improves the residential immovable property he owns or aims to acquire for his own residence or that of his dependants, which agreements are not covered by the Consumer Credit Regulations, 2010.

L.N. 330 of 2010.

(2) These regulations shall not apply to:

(a) Home loan agreements which will eventually be repaid from the sale proceeds of an immovable property.

(b) Home loan agreements where the credit is granted by an employer to his employees as a secondary activity where such a home loan agreement is offered free of interest or at annual percentage rates of charge lower than those prevailing on the market and not offered to the public generally.

(c) Home loan agreements where the credit granted is made available without payment of interest or any other charge.

PART IV

OBLIGATIONS OF THE CREDITOR AND CREDIT INTERMEDIARY

Obligation to
comply with
regulations.

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

Obligation of
credit intermediary
towards consumers.

(2) For the purpose of this Part, unless otherwise provided, the obligations of the creditor shall equally apply to a credit intermediary where a credit intermediary presents or offers home loan agreements to consumers, assists consumers by undertaking preparatory work in respect of home loan agreements, or concludes home loan agreements with consumers on behalf of the creditor.

(3) Where a credit intermediary participates or intends to participate in terms of sub-regulation (2) hereof, a credit intermediary shall:

(a) indicate in advertising and documentation intended for consumers, the extent of his powers, in particular whether he works exclusively with one or more creditors or as an independent broker;

(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 home loan 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.

5. (1) When granting, intermediating or advising on home loans and, where appropriate, ancillary services to consumers, the creditor or the credit intermediary shall act honestly, fairly and professionally in accordance with the best interests of the consumer.

Conduct of business obligations when providing credit to consumers.

(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 best interests of the consumer, as referred to in sub-regulation (1) hereof.

6. (1) Creditors and credit intermediaries, including those registered in another Member State, shall ensure that their management and staff shall possess an appropriate level of knowledge and competence in relation to the offering or granting of home loan agreements.

Minimum competence requirements.

(2) The criteria for determining the appropriate level of knowledge and competence referred to in sub-regulation (1) shall be determined on the basis of:

(a) recognized qualifications; and/or

(b) professional experience.

(3) Where the conclusion of a home loan agreement includes an ancillary service related to it, in particular insurance or investment services, management and staff shall also possess appropriate knowledge and competence in relation to that ancillary service.

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(4) Creditors and credit intermediaries shall be monitored in order to assess whether the requirements referred to in sub-regulations (1) and (2) hereof are complied with on a continuing basis.

Obligation to provide pre-contractual information.

7. (1) In good time before a home loan agreement is concluded, a creditor, and where applicable a credit intermediary, on the basis of the credit terms and conditions offered by the creditor, and taking into account the preferences expressed and information supplied by the consumer, shall provide to the consumer the information identified under regulation 8 and listed in the First Schedule, in order to assist the consumer in comparing different offers and reaching an informed decision on whether to conclude a home loan agreement with the creditor.

Adequate explanations.

(2) Creditors and, where applicable, credit intermediaries shall provide adequate explanations to the consumer on the proposed home loan agreement and any ancillary services, in order to place the consumer in a position enabling him to assess whether the proposed home loan agreement is adapted to his needs and financial situation.

(3) Such adequate explanations shall include an explanation of the information and terms included in the pre-contractual information to be provided in accordance with regulation 8 and of the consequences that concluding the home loan agreement may have for the consumer, including in the event of default in payment by the consumer.

Content of pre-contractual information.

8. (1) General information about home loan agreements shall be made available by creditors or, where applicable, credit intermediaries at all times in a 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 shall include at least the following:

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

(b) where applicable, the identity and geographical address of the credit intermediary involved;

(c) purposes for which the home loan may be used;

- (d) forms of surety;
- (e) description of the types of home loans available with a short description of the differences between fixed and variable rate products, including 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 home loan for the consumer;
- (h) the different options available for reimbursing the credit to the creditor (including the number, frequency and amount of the regular repayment instalments);
- (i) a description of the conditions attached to early repayment;
- (j) the duration of the home loan agreement;
- (k) indication of the currency or currencies in which the credit under the home loan agreement are available, including an explanation of the implications for the consumer where the credit is denominated in a foreign currency;
- (l) the borrowing rate, the conditions governing the application of that rate 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; and if different rates apply in different circumstances, the above information shall be supplied in respect of all the applicable rates;
- (m) an indicative example of the total cost of credit for the consumer and annual percentage rate of charge;
- (n) whether a valuation of the property is necessary and, where applicable, by whom it should be carried out;
- (o) details on how to obtain information on tax relief on the home loan agreement interest or other public subsidies.

(3) The creditor and, where applicable, the credit intermediary shall without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences, provide the consumer with the personalised information needed to compare the home loan agreements available on the market, assess their implications and take an informed decision on whether to conclude a home loan agreement.

(4) Such information shall be provided by means of a duly completed personalised standard information sheet, hereafter referred to as the European Standardised Information Sheet ('ESIS'), as set out in Second Schedule to these regulations. The ESIS shall be drawn up on paper or on another durable medium.

(5) The information provided for in the First and Second Schedules to these regulations, shall ensure that the home loan agreement cannot be concluded until the consumer has had sufficient time to compare the offers, assess their implications and take an informed decision on whether to accept an offer.

Creditworthiness.

9. (1) Before the conclusion of a home loan agreement, the creditor shall assess the creditworthiness of the consumer on the basis of sufficient information, where appropriate, obtained from the consumer and, where necessary on the basis of a consultation of a database, or other relevant internal or external sources.

(2) Where applicable, the creditor shall inform the consumer in advance that a database is to be consulted.

Creditworthiness
assessment.

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 home loan agreement, the creditor shall refuse credit.

(2) Where the credit application is rejected, the creditor shall inform the consumer immediately and without charge of the reasons for rejection.

(3) Where the home loan application is rejected on the basis of the data contained, or lack thereof, in a database that has been consulted, the creditor shall inform the consumer immediately and without charge of the name of the database that was consulted as well as of its controller and of his 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 immediately and without 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.

11. If the parties agree to change the total amount of credit after the conclusion of the home loan 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.

12. (1) Further to assessing a consumer's creditworthiness, creditors and credit intermediaries shall ensure that they obtain the necessary information regarding the consumer's personal and financial situation, his preferences and objectives.

(2) Such considerations shall be based on information that is up to date at that moment in time and on reasonable assumptions as to the consumer's situation over the term of the proposed home loan.

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 home loan agreement may only be processed for the purpose of assessing the financial situation of the consumer or of any such other person and their ability to repay.

Collection and
processing of data.
Cap. 440.

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PART V**RIGHTS OF THE CONSUMER**

Right to receive
copy of
agreement.

14. (1) The consumer shall be entitled to receive, free of charge, a copy of the draft home loan agreement.

(2) Sub-regulation (1) does not apply if the creditor is, at the time of the consumer's request, unwilling to proceed to the conclusion of the home loan agreement with the consumer.

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(3) Without prejudice to the Notarial Profession and Notarial Archives Act, on conclusion of the home loan agreement, the consumer shall be entitled to receive a copy of the final agreement which has been duly registered by the notary within a period of fifteen days from the signing of the agreement.

Content of
home loan
agreement.

15. (1) The agreement referred to in regulation 14(3) of these regulations 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) of these regulations;

(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 home loan 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 home loan, 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 home loan 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 home loan 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 home loan 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 home loan agreement;

(h) information concerning the right resulting under regulation 16 of these regulations 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) Should there be a change in the borrowing rate, the creditor shall:

(i) inform the consumer of such a change before the change enters into force;

(ii) communicate the information in writing or on a durable medium;

(iii) inform the consumer of the amount of payments to be made after the entry into force of the new borrowing rates; and

(iv) if the number or frequency of the payments changes, provide the consumer with the particulars of such payment changes.

(b) However, the parties may agree in the home loan agreement that the information referred to in paragraph (a) hereof is to be given to the consumer periodically in cases where the change in the borrowing rate is caused by a change in a reference rate, the new reference rate is made publicly available by appropriate means, which may include a publication on the creditor's website or a public advert, and the information concerning the new reference rate is also kept available in the premises of the creditor.

(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.

Early repayment.

16. (1) A consumer shall have the right to discharge his obligations under a home loan 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 remaining total costs of the credit; and

(b) the creditor shall be entitled to a fair and objectively justified compensation for possible costs directly linked to early repayment of credit as per agreement and the information provided in regulations 8(2)(i), 15(1)(g) and (h) of these regulations, so long as the early repayment falls within a period for which the borrowing rate is fixed.

Provided that 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) hereof, a creditor or credit intermediary shall apply the same calculations to all consumers irrespective of the reason why early repayment was effected.

17. (1) Where the rights of the creditor under a home loan 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. Such defence may also include the right to set-off.

Assignment of rights and set-off.

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

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

PART VI

OBLIGATIONS OF THE CONSUMER

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 home loan application process.

Obligation to disclose correct information.

This information shall be supported, when necessary, by documentary evidence from independently verifiable sources.

(2) 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 home loan 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.

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

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(4) 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 home loan may not be granted. This warning may be provided in a standardised format.

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

PART VII

MISCELLANEOUS

Advertising.

19. (1) Any advertising and marketing concerning home loan agreements as set out in regulation 3 of these regulations shall be fair, clear and not misleading within the meaning of articles 51C and 51D of the Act. In particular, wording that may create false expectations for a consumer regarding the availability or the cost of a house loan shall be prohibited.

Without prejudice to the provisions relating to unfair commercial practices under the Act, referred to in sub-regulation (1) hereof, where a credit advertisement includes an interest rate or any figure relating to the cost of the credit to the consumer, the advertisement shall also include standard information by means of a representative example in accordance with sub-regulation (2) hereof.

(2) The representative example referred to in sub-regulation (1) hereof shall comprise the following items of information:

(a) the identity of the creditor or, where applicable, the credit intermediary;

(b) that the product advertised is a home loan agreement and, where applicable, is secured either by a hypothec or by another comparable security on immovable property or by a surety;

(c) the borrowing rate, whether fixed, variable or both;

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

- (e) the total amount of credit;
- (f) the annual percentage rate of charge;
- (g) the duration of the agreement;
- (h) the total amount payable by the consumer;
- (i) if applicable, the amount of the instalments and the amount of each repayment of credit; and
- (j) a warning, where applicable, concerning the risk of losing the immovable property in the event of non-observance of the commitments linked to the home loan agreement.

The standard information shall be easily legible or clearly audible as appropriate, depending on the medium used for advertising and marketing.

(3) (a) A home loan advertisement 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 home loan, 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) hereof shall be advertised in a prominent way and accompanied by the annual percentage rate of charge.

20. (1) A creditor or credit intermediary from another Member State who intends to or has entered into a home loan agreement with a consumer in Malta, shall have access under the conditions as a Maltese creditor, to the databases which are available in Malta in order to assess the creditworthiness of the consumer: Cross-border access.

Such databases comprise databases operated by private credit bureaux or credit reference agencies and public credit registers.

Provided that a request by a creditor or credit intermediary for access to the said database 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.

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Annual percentage
rate of charge.

(2) This regulation is without prejudice to the application of the Data Protection Act.

21. (1) The annual percentage rate of charge means the total cost of the credit under the home loan agreement to the consumer, expressed as an annual percentage of the total amount of credit.

(2) The annual percentage rate of charge, equating, on an annual basis, to the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in the Third Schedule to these regulations.

(3) For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer under the home loan agreement shall be determined excluding any charges payable by the consumer for non-compliance with any of his commitments laid down in the home loan agreement.

(4) The following costs shall be included in the total cost of credit to the consumer:

(a) the opening of an account, where it is obligatory in order to obtain the credit under the home loan agreement;

(b) the costs of maintaining an account recording both payment transactions and drawdowns;

(c) the costs of using a means of payment for both payment transactions and drawdowns on that account; and

(d) other costs relating to payment transactions, unless the costs have been clearly and separately shown in the home loan agreement or in any other agreement concluded with the consumer.

(5) The following costs shall be excluded from the total cost of credit to the consumer:

- (a) notarial costs;
- (b) costs associated with the provision of security;
- (c) stamp duties; and
- (d) costs related to property valuation.

(6) The calculation of the annual percentage rate of charge shall be based on the assumption that the home loan 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 home loan agreement.

(7) In the case of home loan 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 be calculated at the level set at the signature of the contract.

(8) Where necessary the additional assumptions set out in the Third Schedule to these regulations shall be used in calculating the annual percentage rate of charge.

22. It shall be the responsibility of the Director General under these regulations to:

Enforcement and monitoring.

- (a) monitor the working and effectiveness of these regulations and to take such measures as he deems necessary in order to ensure compliance with these regulations;
- (b) supervise the creditors and credit intermediaries, and ensure that there is compliance by them with the obligations identified under these regulations; and
- (c) ensure that the rights granted to consumers by these regulations are not diminished by the provision of any other law.

Administrative
fines and the
right to appeal.

23. (1) The Director General may impose an administrative fine, issue such order, or decision or take such measure as he deems appropriate in terms of the Act, upon any person who contravenes or fails to comply with any of the provisions of these regulations.

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

(3) In the case of non-compliance with a compliance order, the Director General may impose a daily fine 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.

(4) In determining the amount of the administrative fine specified in this regulation, the Director General shall be guided by the following considerations:

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

Provided that the Director General may, in setting the fine, take into account circumstances that may lead to an increase or decrease in the basic amount:

Provided further that the Director General 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 home loan agreement and the turnover of the creditor;

(b) the Director General may impose a higher administrative fine 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) hereof, 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 Director General 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; and

(iii) where the creditor or the credit intermediary, as the case may be, who is served with a notice in terms of article 106A(5) of the Act, elects to pay the administrative fine without contestation:

Provided that this paragraph shall not apply in the case of a second or subsequent infringement.

(5) In discharging his functions under these regulations, the Director General shall have the same powers of investigation and enforcement as prescribed under the Act.

(6) Any person who feels aggrieved by a decision, order, administrative fine or measure taken by the Director General, may file an appeal before the Appeals Tribunal established in terms of article 31 of the Malta Competition and Consumer Affairs Authority Act, and articles 110B to 110G of the Act shall *mutatis mutandis* apply. Cap. 510.

24. (1) The provisions of these regulations shall prevail and apply notwithstanding anything to the contrary contained in any home loan agreement entered into by the consumer. Regulations to prevail.

(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 home loan agreement to the effect that the applicable law to the home loan

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agreement shall be the law of a non-Member State, the protection granted by these regulations shall continue to apply where the home loan agreement has a close link with Malta or any other Member State.

Revokes L.N. 84 of 2005.

25. (1) The Consumer Credit Regulations, 2005, are hereby being revoked.

(2) Without prejudice to sub-regulation (1) hereof, agreements entered into under the Consumer Credit Regulations, 2005, before the coming into force of these regulations, shall remain in force and be regulated by the terms and conditions applicable thereto.

FIRST SCHEDULE
[Regulations 8 and 15]

General Information on credit for home loans to be provided to the consumer:

- (a) identity and the geographical address of the creditor;
- (b) where applicable, the identity and geographical address of the credit intermediary involved;
- (c) purposes for which the home loan may be used;
- (d) forms of surety;
- (e) description of the types of home loans available with a short description of the differences between fixed and variable rate products, including 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 home loan for the consumer;
- (h) the different options available for reimbursing the credit to the creditor (including the number, frequency and amount of the regular repayment instalments);
- (i) whether there is a possibility of early repayment and, where applicable, a description of the conditions attached to early repayment;
- (j) the duration of the home loan agreement;
- (k) indication of the currency or currencies in which the credit under the home loan agreement are available, including an explanation of the implications for the consumer where the credit is denominated in a foreign currency;
- (l) the borrowing rate, the conditions governing the application of that rate 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; and if different rates apply in different circumstances, the above information shall be supplied in respect of all the applicable rates;
- (m) an indicative example of the total cost of credit for the consumer and annual percentage rate of charge;
- (n) whether a valuation of the property is necessary and, where applicable, by whom it should be carried out;
- (o) details on how to obtain information on tax relief on the home loan agreement interest or other public subsidies.

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SECOND SCHEDULE
[Regulation 8 (3) and (4)]

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 on how to complete the ESIS are provided in Part B.

Wherever 'where applicable' is indicated, the creditor shall fill in the box if the information is relevant to the credit agreement. Where the information is not relevant, the creditor shall delete the information in question or the entire section. In the latter case, the numbering of the ESIS sections shall be adjusted accordingly.

The below information 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.

ESIS Model

<i>(Introductory text)</i>
This document was produced on [current date] in reply to your request for information. This document does not constitute an obligation for us to grant you a loan. 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]. After that date, it may change in line with market conditions.
1. Lender
[Name] [Geographical address] [Telephone number] [E-mail address] [Web address] Supervisory authority: [Name and Web address of supervisory authority] Contact person: [Full contact details of contact person]
2. Main features of the loan
Amount and currency of the loan granted: [value][currency] <i>(Where applicable)</i> "This loan is not in [national currency]" Duration of the loan: [duration] [Type of loan] [Type of applicable interest rate] Total amount to be reimbursed: [Maximum available loan amount relative to the value of the property]: <i>(Where applicable)</i> [Security]
3. Interest rate

The 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] [Other components of the APRC]
4. Frequency and number of payments
Repayment frequency: [frequency] Number of payments: [number]
5. Amount of each instalment
[Amount] [currency] <i>(Where applicable)</i> The exchange rate used for converting your repayment in [credit currency] to [national currency] will be the rate published by [name of institution publishing exchange rate] on [date].
6. Illustrative repayment table
This table shows the amount to be paid every [frequency]. The instalments (column [relevant no.]) are the sum of interest paid (column [relevant no.]), 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. [Amount and currency of the loan] [Duration of the loan] [Interest rate] [Table] <i>(Where applicable)</i> [Warning on the variability of the instalments]
7. Additional obligations and costs
The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document. [Obligations] <i>(Where applicable)</i> Please note that the lending conditions described in this document (including the interest rate) may change if these obligations are not complied with. In addition to the costs already included in the [frequency] instalments, this loan entails the following costs: Costs to be paid on a one-off basis Costs to be paid regularly Please make sure that you are aware of all other taxes and costs (e.g. notary fees) associated with this loan.
8. Early repayment
<i>(Where applicable)</i> You do not have the possibility to repay this loan early. <i>(Where applicable)</i> You have the possibility to repay this loan early, either fully or partially. <i>(Where applicable)</i> [Conditions] [Procedure] <i>(Where applicable)</i> Exit charge: <i>(Where applicable)</i> Should you decide to repay this loan early, please contact us to ascertain the exact level of the exit charge at that moment.
9. Internal complaint scheme
[Name of the relevant department] [Geographical address]

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[Telephone number] [E-mail address] Contact person: [contact details]
10. External complaint body
In the event of disagreement with the lender which remains unresolved the borrower has the possibility to address a complaint to: [Name of the complaint body] [Geographical address] [Telephone number] [E-mail address]
11. 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, we invite you to contact us as quickly as possible to explore possible solutions.
(Where applicable) 12. Additional information in the case of distance marketing
(Where applicable) The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract is [applicable law]. 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.
13. Risks and warnings
• We draw your attention to the risks involved in taking out a home loan. • (Where applicable) The interest rate of this loan does not remain fixed during the whole duration of the loan. • (Where applicable) This loan is not in [national currency]. Please note that the amount in [national currency] that you will need to pay at each instalment will vary in line with the [loan's currency/national currency] exchange rate. • (Where applicable) This is an interest-only loan. This means that, during its duration, you will need to build up enough capital in order to reimburse the loan amount at maturity. • You will also need to pay other taxes and costs (where applicable), e.g. notary fees. • Your income may change. Please make sure that if your income falls you will still be able to afford your [frequency] repayment instalments. • (Where applicable) Your home may be repossessed if you do not keep up with payments.

PART B
Instructions to complete the ESIS

In completing the ESIS, the following instructions shall be followed:

Section 'Introductory text'

- (1) The validity date shall be properly highlighted.

Section '1. Lender'

- (1) Name, telephone number, geographical address and web address of the creditor shall refer to the creditor's headquarters. The relevant authority for the supervision of lending activities shall be indicated.
- (2) Information on the contact person 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 borrower.
Indication of the telephone number, e-mail address and web address of the representative of the credit provider is optional.
- (4) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the creditor shall indicate the name of the trade register in which the creditor is entered and its registration number or an equivalent means of identification in that register.

Section '2. Main features of the loan'

- (1) The duration of the credit shall be indicated in years or months, whichever is the most relevant. Where the duration of the credit can vary during the life of the contract, the creditor shall explain when and under which conditions this can occur.

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. constant, progressive or regressive reimbursements).

- (2) This section shall also explain whether the interest 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 interest rate variability, such as caps or floors. The formula used to revise the interest rate shall be explained. The creditor shall also indicate where further information on the indices or rates used in the formula can be found. Where the credit currency is different from the national currency, the creditor shall

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include information on the formula used to calculate the exchange rate spreads and the frequency of their adjustment.

- (3) 'Total amount to be reimbursed' shall be calculated as the sum of the credit amount and the total cost of the credit.
- (4) 'Maximum available loan amount relative to the value of the property' shall indicate 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.
- (5) Where the credit will be secured by a mortgage on the property or another commonly used guarantee, the creditor shall draw the borrower's attention to this.

Section '3. Interest rate'

- (1) In addition to the interest rate, all the other costs contained in the APRC shall be listed (name and equivalence in percentage). Where providing a percentage rate for each of those costs is not possible or does not make sense, the creditor shall provide a global percentage rate.

Section '4. Frequency and number of payments'

- (1) Where payments are to be done 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 borrower. The number of payments indicated shall cover the whole duration of the credit.

Section '5. Amount of each instalment'

- (1) The loan currency 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 valid and when and how frequently afterwards it will change.
- (3) Where the credit currency is different to the borrower's national currency, the creditor shall include numerical examples clearly showing how changes to the relevant exchange rate may affect the amount of the instalments. The illustrated exchange rate changes need to be realistic, symmetrical and include at least the same number of unfavourable cases as favourable cases.
- (4) Where the currency used for the payment of instalments is different from the credit currency, the exchange rate to be used shall be clearly indicated. Such indications shall include the name of the institution publishing the exchange and the moment at which the applicable exchange is calculated.

Section '6. Illustrative repayment table'

- (1) Where the interest may vary during the life of the credit, the creditor shall indicate after the reference to the interest rate, the period during which that initial interest rate will remain valid.
- (2) The table to be included in this section shall contain the following columns: 'repayment moment', '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'.
- (3) 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 amount paid by the borrower (i.e. the overall sum of the 'amount of the instalment' column) shall be clearly highlighted and presented as such.
- (4) Where the interest rate is subject to revision and the amount of the instalment after each revision is unknown, the creditor may indicate in the repayment 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 borrower 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. The creditor shall also include: (1) where relevant, the applicable caps and floors; (2) an example of how the amount of the instalment would vary where the interest rate increases or decreases by 1 % or by a higher percentage, where this is more realistic given the magnitude of normal changes to the interest rate and (3) where there is a cap, the instalment amount in the worst-case scenario.

Section '7. Additional obligations and costs'

- (1) The creditor shall refer in this section to obligations such as the need to insure the property, to purchase life insurance 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 also list each of the costs by category, indicating their amount, to whom they are to be paid and at what moment. Where the amount is not known, the creditor shall provide a possible range or an indication of how the amount will be calculated.

Section '8. Early repayment'

- (1) Where the credit may be repaid early, the creditor shall indicate under what conditions, if any, the borrower can do so. The creditor shall also indicate the steps the borrower should take in order to request the early repayment.

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- (2) Where an exit charge will be applied to the early repayment, the creditor shall draw the borrower's attention to this and indicate its amount. In cases where the amount of the exit charge 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 exit charge will be calculated. The creditor shall then provide at least two illustrative examples in order to demonstrate to the borrower the level of the exit charge under different possible scenarios.

Section '9. Internal complaint scheme'

- (1) Information on the contact person is optional.

Section '10. External complaint body'

- (1) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the creditor shall also specify whether or not there is an out-of-court complaint and redress mechanism for the borrower and, if so, explain the methods of access to it.

Section '11. Non-compliance with the commitments linked to the credit: consequences for the borrower'

- (1) Where non-observance of any of the borrower's obligations linked to the credit may have financial or legal consequences for the borrower, the creditor shall describe in this section the different possible cases (e.g. late payments/default, failure to respect the obligations set out in Section 7 'Additional obligations and costs').
- (2) For each of those cases, the creditor shall specify, in clear, easily comprehensible terms, the penalties or consequences to which they may give rise. Reference to serious consequences should be highlighted.

Section '12. Additional information in the case of distance marketing'

- (1) Where applicable, this section will include a clause stipulating the law applicable to the credit agreement and/or the competent court.

Section '13. Risks and warnings'

- (1) All the listed warnings shall be highlighted.
- (2) Where applicable, the creditor shall recapitulate in this section the general interest rate revision rules and provide a quantitative example of how the instalments would increase if the credit's interest rate were to increase by X % (as explained in section 'Illustrative repayment table') and/or in the worst-case scenario (if there is a cap on the interest rate variability).

THIRD 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 $1 \leq k \leq m$,

C_k is the amount of drawdown k,

t_k 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 $t_1 = 0$

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

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

D_l 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.

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(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 (A_k), which will be positive or negative, in other words either paid or received during periods 1 to k , 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 there is no fixed timetable for repayment, it shall be assumed:

- (i) that the credit is provided for a period of twenty years, and
- (ii) that the credit will be repaid in 240 equal instalments and at monthly intervals.

(e) If there is a fixed timetable for repayment but the amount of such repayments is flexible, the amount of each repayment shall be deemed to be the lowest for which the agreement provides.

(f) Unless otherwise specified, where the credit agreement provides for more than one repayment date, the credit is to be made available and the repayments made on the earliest date provided for in the agreement.

(g) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 180 000.

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

(i) 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, the calculation of the annual percentage rate 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 calculating the annual percentage rate, based on the value of the agreed indicator at that time.

