Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 21,291, 30 ta' Lulju, 2024

Taqsima B

L.N. 172 of 2024

CREDIT SERVICERS AND CREDIT PURCHASERS ACT (CAP. 645)

Credit Servicers and Credit Purchasers Act (Passporting) Regulations, 2024

IN EXERCISE of the powers conferred by article 19(1) of the Credit Servicers and Credit Purchasers Act, the Minister responsible for the regulation of financial services, acting on the advice of the Malta Financial Services Authority, has made the following regulations: -

Citation and scope.

1. (1) The title of these regulations is the Credit Servicers and Credit Purchasers Act (Passporting) Regulations, 2024.

(2) The scope of these regulations is to transpose Articles 13 and 14 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, and they shall be interpreted and applied accordingly.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires:-

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"the Act" means the Credit Servicers and Credit Purchasers Act;

"borrower" means a legal or natural person who has concluded a credit agreement with a credit institution, including its legal successor or assignee;

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"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

"Conduct of Business Rules" means Rules, other than Credit Servicing Rules, issued by the competent authority in accordance with the Act;

"credit agreement" means an agreement as originally issued, modified or replaced, whereby a credit institution grants a credit in the form of a deferred payment, a loan or other similar financial accommodation;

"credit servicer" means a legal person that, in the course of its business, manages and enforces the rights and obligations related to a creditor's rights under a non-performing credit agreement, or to the non-performing credit agreement itself, on behalf of a credit purchaser, and carries out at least one or more credit servicing activities;

"credit servicing activities" means one or more of the following activities:

(a) collecting or recovering from the borrower, in accordance with national law, any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself;

(b) renegotiating with the borrower, in accordance with national law, any terms and conditions related to a creditor's rights under a credit agreement, or of the credit agreement itself, in line with the instructions given by the credit purchaser, where the credit servicer is not a credit intermediary as defined in Article 3(f) of Directive 2008/48/EC or in Article 4(5) of Directive 2014/17/EU;

(c) administering any complaints relating to a creditor's rights under a credit agreement or to the credit agreement itself; and, or

(d) informing the borrower of any changes in interest rates or charges or of any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself;

"Credit Servicing Rules" means Rules, other than Conduct of Business Rules, which may be issued by the competent authority under various articles of the Act;

"Directive (EU) 2015/849" means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"European credit servicer" means a credit servicer authorised as such in a Member State other than Malta, under the national law of such Member State transposing the NPL Directive;

"European regulatory authority" means a body or bodies designated by a Member State other than Malta in accordance with Article 21(3) of the NPL Directive to carry out the functions and duties provided for under the NPL Directive;

"home Member State" means the Member State in which the registered office of a credit servicer 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 a credit servicer has established a branch or where it provides credit servicing activities, and in any event where the borrower is domiciled, or 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;

"Maltese credit servicer" means a credit servicer authorised as such by the competent authority under the Act;

"Member State" means a Member State of the European Union and includes an EEA State;

"NPL Directive" means 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 as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"Tribunal" means the Financial Services Tribunal established in terms of the Malta Financial Services Authority Act.

(2) Words and expressions used in these regulations which are also used in the Act but which are not defined herein shall have the same meaning as assigned to them in the Act.

Exercise by European credit servicers of the freedom to provide services.

3. (1) A European credit servicer may, subject to the applicable provisions of the Act, and any regulations made thereunder, and Credit Servicing Rules and Conduct of Business Rules issued thereunder, act as a credit servicer in Malta.

(2) Where a European credit servicer intends to act as such in Malta, it shall submit the following information to the European regulatory authority of the home Member State:

(a) notice of its intention to act as a credit servicer in Malta and, if already known to the European credit servicer, the Member State where the credit was granted, when such Member States is a Member State other than Malta or the home Member State;

(b) where applicable, the address of its branch established in Malta;

(c) where applicable, the identity and address of the credit service provider in Malta;

(d) the identity of the persons responsible for managing the provision of credit servicing activities in Malta;

(e) where applicable, the details of the measures taken to adapt its internal procedures, governance arrangements and internal control mechanisms in order to ensure compliance with the laws applicable to a creditor's rights under a credit agreement or the credit agreement itself;

Cap. 373.

(f) a description of the procedure established in order to comply with the applicable provisions of the Prevention of Money Laundering Act, and any regulations made thereunder where credit servicers are designated as subject persons under the said Act or any regulations made thereunder;

(g) confirmation that it has appropriate means to communicate in Malta's official languages or in the language of the credit agreement; and

(h) confirmation as to whether or not it is authorised in its home Member State to receive and hold funds from borrowers.

(3) Within forty-five (45) days of receipt of the information referred to in sub-regulation (2), the said information shall be communicated to the competent authority by the European regulatory authority of the home Member State, and the competent authority shall

acknowledge receipt of such information without delay.

(4) The European credit servicer shall, following communication by the European regulatory authority of the home Member State of the information referred to in sub-article (2) to the competent authority, be informed by the European regulatory authority of the home Member State of the date on which the said information was communicated to the competent authority and the date on which the competent authority acknowledged receipt of that information.

(5) The European credit servicer shall be able to act as a credit servicer in Malta from the earlier date of the following occurrences:

(a) receipt by the European regulatory authority of the home Member State of the communication from the competent authority acknowledging receipt of the information referred to in sub-regulation (2);

(b) in the absence of receipt of the communication referred to in paragraph (a), after the expiry of two (2) months from the date of submission by the European regulatory authority of the home Member State of all information referred to in sub-regulation (2) to the competent authority.

(6) The European regulatory authority of the home Member State shall be informed by the European credit servicer of any subsequent change to the information referred to in sub-regulation (2) and, in any such case, the provisions of sub-regulations (3) to (5) shall apply.

(7) The competent authority shall record in the list referred to in article 7(10) of the Act, the European credit servicers which are authorised to act as credit servicers in Malta in terms of these regulations and the details of the home Member State.

Supervision of European credit servicers.

4. (1) Without prejudice to regulation 2, where a European credit servicer performs credit servicing activities in Malta, the European regulatory authority of the home Member State, the competent authority and, where appropriate, the competent authority of the Member State where the credit was granted, when different from the European regulatory authority of the home Member State and the competent authority, shall cooperate closely in the performance of their functions and duties, in particular when carrying out checks, investigations and on-site inspections.

(2) The competent authority may be requested, by the European regulatory authority of the home Member State, to assist the said European regulatory authority in carrying out an on-site

inspection of a branch set up, or of a credit service provider appointed, in Malta:

Provided that an inspection as referred to in this sub-regulation shall be conducted in accordance with Maltese law.

(3) The competent authority shall be entitled to decide on the most appropriate measures to be taken in each individual case in order to meet the request for assistance made by the European regulatory authority of the home Member State, as referred to in sub-regulation (2).

(4) Where the competent authority decides to conduct on-site inspections on behalf of the European regulatory authority of the home Member State, it shall inform the said European regulatory authority of the results thereof without delay.

(5) The competent authority may, on its own initiative, conduct verifications, inspections, and investigations in respect of credit servicing activities provided in Malta by a European credit servicer:

Provided that the competent authority shall provide the results of those verifications, inspections and investigations to the European regulatory authority of the home Member State without delay.

(6) Where the competent authority has evidence that a European credit servicer performing credit servicing activities in Malta, in accordance with the national law of the Member State of such European credit servicer transposing Article 13 of the NPL Directive, infringes any applicable provision of the law, including national law transposing the NPL Directive, they shall transmit that evidence to the European regulatory authority of the home Member State and request that it takes appropriate measures.

(7) The provisions of sub-regulation (6) shall be without prejudice to the supervisory, investigatory and sanctioning powers of the competent authority in relation to the European credit servicer under Maltese legislation, namely those applicable to the credit or the credit agreement.

(8) Where a credit servicer continues to infringe any applicable provision of the law, including national law transposing the NPL Directive, and after the competent authority has informed the European regulatory authority of the home Member State thereof, the competent authority may impose appropriate administrative penalties and remedial measures in order to ensure compliance with the

provisions of the Act, and any regulations made, and Credit Servicing Rules and Conduct of Business Rules issued, thereunder, when either of the following apply:

(a) no adequate and effective steps were taken by the European credit servicer to rectify the infringement in a reasonable time; or

(b) in an urgent case, where immediate action is necessary in order to address a serious threat to the collective interests of the borrowers:

Provided that the competent authority may impose administrative penalties and remedial measures as referred to in this sub-regulation notwithstanding any administrative penalties and remedial measures already imposed by the European regulatory authority of the home Member State.

(9) Without prejudice to sub-regulation (8), the competent authority may prohibit further activities of a European credit servicer that infringes any applicable provision of the law, including national law transposing the NPL Directive, until such time as an adequate decision is taken by the European regulatory authority of the home Member State or the credit servicer takes steps to remedy the infringement.

Exercise by Maltese credit servicers of the freedom to provide services.

5. (1) A Maltese credit servicer may act as a credit servicer in a Member State other than Malta.

(2) The provisions of sub-regulation (1) shall be without prejudice to any restrictions or requirements established in the national law of the host Member State in accordance with the NPL Directive, including, where applicable, a prohibition on receiving and holding funds from borrowers, that are not related to other authorisation requirements of credit servicers, or to those established for the renegotiation of the terms and conditions related to a creditor's rights under a credit agreement or of the credit agreement itself.

(3) Where a Maltese credit servicer intends to act as such in a Member State other than Malta, it shall submit the following information to the competent authority:

(a) the host Member State in which it intends to act as a credit servicer and, if already known to the Maltese credit servicer, the Member State where the credit was granted, when such Member State is a Member State other than Malta or the host Member State;

(b) where applicable, the address of its branch established in the host Member State;

(c) where applicable, the identity and address of the credit service provider in the host Member State;

(d) the identity of the persons responsible for managing the provision of credit servicing activities in the host Member State;

(e) where applicable, details of the measures taken to adapt its internal procedures, governance arrangements and internal control mechanisms in order to ensure compliance with the laws applicable to a creditor's rights under a credit agreement or the credit agreement itself;

(f) a description of the procedure established in order to comply with the national law of the host Member State on anti-money laundering and counter terrorist financing where credit servicers are designated as obliged entities under the said law transposing Directive (EU) 2015/849;

(g) confirmation that it has appropriate means to communicate in the language of the host Member State or in the language of the credit agreement; and

(h) confirmation as to whether or not it is authorised in Malta to receive and hold funds from borrowers.

(4) The competent authority shall, within forty-five (45) days of receipt of the information referred to in sub-regulation (3), communicate that information to the European regulatory authority of the host Member State, and receipt of such information shall be acknowledged by the said European regulatory authority without delay.

(5) The competent authority shall, following communication of the information referred to in sub-regulation (3) to the European regulatory authority of the host Member State, inform the Maltese credit servicer of the date on which the said information was communicated to the European regulatory authority of the host Member State and the date on which the said European regulatory authority acknowledged receipt of that information.

(6) The competent authority shall also communicate all the information referred to in sub-regulation (3) to the competent authority of the Member state where the credit was granted, when such Member

State is a Member State other than Malta and the host Member State.

(7) The Maltese credit servicer shall have the right to appeal before the Tribunal where the competent authority fails to communicate the information referred to in sub-regulation (3) in accordance with sub-regulations (4) and (6).

(8) The Maltese credit servicer shall be able to act as a credit servicer in the host Member State from the earlier of the following:

(a) receipt by the competent authority of the communication from the European regulatory authority of the host Member State acknowledging receipt of the information referred to in sub-regulation (3);

(b) in the absence of receipt of the communication referred to in paragraph (a), after the expiry of two (2) months from the date of communication by the competent authority of all information referred to in sub-regulation (3) to the European regulatory authority of the host Member State.

(9) The Maltese credit servicer shall inform the competent authority of any subsequent change to the information referred to in sub-regulation (3) and, in any such case, the provisions of sub-regulations (4) to (8) shall apply.

Supervision of Maltese credit servicers.

6. (1) The competent authority shall review and evaluate the ongoing compliance, by a Maltese credit servicer which performs credit servicing activities in a host Member State, with the provisions of the Act and any regulations made, and Credit Servicing Rules and Conduct of Business Rules issued, thereunder.

(2) The competent authority shall be empowered to supervise, investigate and impose administrative penalties and remedial measures on Maltese credit servicers in respect of the provisions of the Act and any regulations made, and Credit Servicing Rules and Conduct of Business Rules issued, thereunder when performing credit servicing activities in a host Member State.

(3) The competent authority shall communicate any measures taken in respect of Maltese credit servicers to the European regulatory authority of the host Member State and, where appropriate, the competent authority of the Member State where the credit was granted, where such Member State is a Member State other than Malta and the host Member State.

(4) Without prejudice to regulation 5, where a Maltese credit servicer performs credit servicing activities in a Member state other

than Malta, the competent authority, the European regulatory authority of the host Member State, and, where appropriate, the competent authority of the Member State where the credit was granted, when different from the competent authority and the European regulatory authority of the host Member State, shall cooperate closely in the performance of their functions and duties, in particular when carrying out checks, investigations and on-site inspections.

(5) The competent authority may, in the exercise of its function and duties provided for in the Act and any regulations made, and Credit Servicing Rules and Conduct of Business Rules issued, thereunder, request the European regulatory authority of the host Member State for its assistance in carrying out an on-site inspection of a branch set up, or of a credit service provider appointed, in the host Member State:

Provided that an inspection as referred to in this sub-regulation shall be conducted in accordance with the national law of the host Member State where the inspection is carried out.

(6) The European regulatory authority of the host Member State shall be entitled to decide on the most appropriate measures to be taken in each individual case in order to meet the request for assistance made by the competent authority as referred to in sub-regulation (5).

(7) Where the European regulatory authority of the host Member State has evidence that a Maltese credit servicer performing credit servicing activities in the host Member State, in accordance with national law transposing Article 13 of the NPL Directive, infringes any applicable provision of the law, including national law transposing the NPL Directive, such evidence shall be transmitted to the competent authority by the European regulatory authority of the host Member State, and the competent authority shall be requested to take appropriate measures.

(8) The provisions of sub-regulation (7) shall be without prejudice to the supervisory, investigatory and sanctioning powers of the European regulatory authority of the host Member State in relation to the European credit servicer under national law, namely those applicable to the credit or the credit agreement.

(9) The competent authority shall communicate details of any administrative or other procedure initiated in respect of the evidence provided by the European regulatory authority of the host Member State in terms of sub-regulation (7), or of any administrative penalties and remedial measures taken against the Maltese credit servicer, or of a reasoned decision why no measures were taken, to the European

regulatory authority of the host Member State that transmitted the said evidence by no later than two (2) months from the date of the request referred to in sub-regulation (7):

Provided that where a procedure as referred to in this sub-regulation is initiated, the competent authority shall regularly inform the European regulatory authority of the host Member State about the status of such procedure.

Supervision of credit servicers in the Member State where the credit was granted.

7. (1) Where Malta is the Member State where the credit was granted, and the host Member State and the home Member State are Member States other than Malta, the competent authority shall, where it has evidence that a credit servicer authorised as such by a European regulatory authority has infringed any applicable provision of national law transposing the NPL Directive or any national law applicable to the credit or the credit agreement, transmit that evidence to the European regulatory authority of the home Member State and request that it takes appropriate measures.

(2) The provisions of sub-regulation (1) shall be without prejudice to the supervisory, investigatory and sanctioning powers of the competent authority.

VERŻJONI ELETTRONIKA

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€0.54