

CONSULTATION DOCUMENT

DRAFT LEGAL NOTICE TO TRANSPOSE THE MORTGAGE CREDIT DIRECTIVE (MCD) (AMENDING THE HOME LOAN REGULATIONS - SUBSIDIARY LEGISLATION 378.10)

CREDIT AGREEMENTS FOR CONSUMERS RELATING TO RESIDENTIAL IMMOVABLE PROPERTY REGULATIONS

PART I (Preliminary)

Preliminary

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

(2) The purpose of these regulations is to implement 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. [Article 42(2) of the MCD]

(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 a credit falling within the scope of these regulations in accordance with regulation 3, 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 of credit intermediaries. [Article 1 of the MCD]

PART II (Definitions)

Definitions

2. For the purpose of these regulations: [Article 4 of the MCD]

"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;

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

“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;

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

"consumer" means a natural person who, in transactions covered by these regulations, is acting for purposes which are outside his trade, business 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;

"the 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;

"creditor" means a natural or legal person who is authorised to grant or promise to grant credit falling within the scope of these regulations in accordance with regulation 3 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, a credit falling within the scope of these regulations in accordance with regulation 3 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;

"credit institution" means a credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, as amended from time to time;

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

"the 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 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 Article 2(1) of the Financial Institutions Act and which is licensed in terms of the Financial Institutions Act;

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

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

"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;

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

"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 to carry out lending;

"Member State" shall have the same meaning as that assigned to it in the Act;

"the 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;

"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;

"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 point (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 credit agreement;

"total amount payable by the consumer" means the sum of the total amount of the credit falling within the scope of these regulations in accordance with regulation 3 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 falling within the scope of the regulations in accordance with regulation 3, but excluding:

- (i) Notarial fees;
- (ii) Public Registry and land Registry enrolment fees;
- (iii) costs relating to searches regarding title;
- (iv) costs related to property valuation;
- (v) costs associated with the provision of security;
- (vi) stamp duties;
- (vii) any other fees ancillary to the publication of the public deed of loan;
- (viii) any other registration fees for the transfer of ownership of the immovable property; and
- (ix) 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 credit falling within the scope of these regulations in accordance with regulation 3 or 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

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. [Article 3(1) of the MCD]
- (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 point (a) of sub-regulation 1. [Article 3(2) of the MCD]

Part IV (Competent Authorities)

Competent Authorities

3A. (1) The competent authorities for the purposes of these regulations shall be the MFSA and the Director General: [Article 5(1) of the MCD]

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 Director General. [Article 36(1) of the MCD]

- (2) The MFSA and the Director General shall:
- (a) for the purposes of ensuring the application and enforcement of these regulations, 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 [Article 5(3) of the MCD]
 - (b) collaborate closely in order to discharge their respective duties effectively. [Article 5(6) of the MCD]
- (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. [Article 5(2) of the MCD]
- (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. [Article 5(2) of the MCD]

(5) The Director General shall inform the European Commission and the EBA of the designation of the MFSA and the Director General 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 21 March 2016. [Article 5(4) of the MCD]

(6) The competent authorities shall exercise their powers directly in conformity with national law. [Article 5(5) of the MCD]

Powers and duties of the MFSA

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) The MFSA shall not be inhibited by other national legislative provisions in the performance of its duties.

(7) Without prejudice to any of the powers conferred in 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 the Malta Financial Services Authority Act and by these regulations or any Credit Intermediaries' Rules issued thereunder:

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

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

(9) Where the MFSA is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this article.

(10) 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.

PART V (Financial Education of Consumers)

Financial education of consumers [Article 6 of MCD]

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 falling within the scope of these regulations in accordance with regulation 3, 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 falling within the scope of these regulations in accordance with regulation 3, 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 falling within the scope of these regulations in accordance with regulation 3, which may be provided to consumers by the Director General and by consumer organisations from time to time.

PART VI (Obligations of Creditors and Credit Intermediaries)

Obligation to comply with regulations

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

Obligation of credit intermediary towards consumers

(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

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. [Article 8 of the MCD]

Conduct of business obligations when providing credit to consumers.

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 falling within the scope of these regulations in accordance with regulation 3 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 falling within the scope of these regulations in accordance with regulation 3 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 point (a) of regulation 8B(3). [Article 7(1) of MCD]

(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). [Article 7(2) of MCD]

(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. [Article 7(3) of MCD]

(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. [Article 7(4) of MCD]

(5) For the purposes of sub-regulation (4), commissions paid by the creditor to the credit intermediary shall be banned. [Article 7(4) of MCD]

Knowledge and competence requirements for staff

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. [Article 9(1) of the MCD]

(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. [Article 9(2) of the MCD]

(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 points (b), (c), (e) and (f) of paragraph 1 of the Third Schedule. [Article 9(3) of the MCD]

(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:

- (i) 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;
- (ii) under the freedom to provide services, the MFSA may establish the minimum knowledge and competence requirements for those requirements referred to in points (b), (c), (e) and (f) of paragraph 1 of the Third Schedule. [Article 9(3) of the MCD]

(5) The MFSA shall supervise creditors and credit intermediaries 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. [Article 9(4) of the MCD]

(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 Director General 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. [Article 9(5) of the MCD]

(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 Director General 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. [Article 9(5) of the MCD]

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

- (a) upon the advice of the MFSA, 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: [Article 9(5) of the MCD]

Provided that any tasks and responsibilities which are delegated to the Director General by European regulatory authorities of other Member States in accordance with Article 9(5) of the MCD, shall be carried out by the MFSA.

(9) For the purposes of sub-regulations (6), (7) and (8):

- i. the MFSA shall cooperate closely with the Director General and shall provide the Director General with all the necessary information in writing in a timely manner; and
- ii. the Director General shall cooperate closely with the MFSA and shall provide the MFSA with all the information received from European regulatory authorities in a timely manner:

(10) 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.

(11) Any criteria established by the MFSA in order for credit intermediaries' or creditors' staff to meet their professional requirements shall be made public. [Article 29(3) of the MCD]

PART VII
(Information and Practices Preliminary to the Conclusion of the Credit Agreement)

Obligation to provide pre-contractual information.

7. (1) The creditor and, where applicable, the credit intermediary shall provide the consumer with the personalised information needed to compare the credits falling within the scope of these regulations in accordance with regulation 3 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 12A
- (b) in good time before the consumer is bound by any credit agreement or offer; and [Article 14(1) of the MCD]
- (c) on paper or on another durable medium. [Article 14(2) of the MCD]

(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: [Article 14(5) of the MCD]

Provided that from the 22 March 2019, the creditor and, where applicable, the credit intermediary shall use the ESIS set out in Annex II of the MCD [Article 14(5) of the MCD]

(3) Creditors and, where applicable, credit intermediaries shall provide the ESIS to the consumer before the provision of an offer binding on the creditor: [Article 14(4) of the MCD]

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. [Article 14(3) of the MCD]

(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. [Article 14(6) of the MCD]

- (a) The time period referred to in this sub-regulation shall be a reflection period before the conclusion of the credit agreement.
- (b) The reflection period specified in this sub-regulation shall;
 - (i) be binding on the creditor for the duration of the reflection period; and
 - (ii) 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. [Article 14(7) of the MCD]

(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. [Article 14(8) of the MCD]

(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 point (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. [Article 14(10) of the MCD]

(8) The creditor or, where applicable, the credit intermediary shall, at least where no right of withdrawal exists, provide the consumer with a copy of the draft credit agreement, at the time of the provision of an offer binding on the creditor. [Article 14(11) of the MCD]

Adequate explanations

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. [Article 16(1)]

(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. [Article 16(1)]

(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. [Article 16(2) of the MCD]

Content of pre-contractual information

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. [Article 13(1) of the MCD]

(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 falling within the scope of these regulations in accordance with regulation 3 may be used;
- (d) the forms of surety, 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 different options available for reimbursing the credit falling within the scope of these regulations in accordance with regulation 3 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 possible duration of the credit agreement;
- (k) 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;

- (l) 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;
- (m) 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;
- (n) 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;
- (o) the range of different options available for reimbursing the credit falling within the scope of these regulations in accordance with regulation 3 to the creditor, including the number, frequency and amount of the regular repayment instalments;
- (p) 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;
- (q) a description of the conditions directly relating to early repayment;
- (r) 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;
- (s) details on how to obtain information on tax relief on the credit agreement interest or other public subsidies;
- (t) an indication of ancillary services the consumer is obliged to acquire in order to obtain the credit falling within the scope of these regulations in accordance with regulation 3 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
- (u) a general warning concerning possible consequences of non-compliance with the commitments linked to the credit agreement. [Article 13(1) of the MCD]

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

(4) The Director General 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. [Article 13(2) of the MCD]

Information requirements concerning credit intermediaries

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, 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. [Article 15(1) of the MCD]

(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. [Article 15(2) of the MCD]

(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. [Article 15(3) of the MCD]

(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. [Article 15(4) of the MCD]

Part VIII (Advisory Services)

Standards for advisory services

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. [Article 22(1) of the MCD]

(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 paragraph (b) of sub-regulation (3) or a wide range of products from across the market in accordance with paragraph (c) of sub-regulation (3) 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 points (a) and (b) may be provided to the consumer in the form of additional pre-contractual information. [Article 22(2) of the MCD]

(3) Where advisory services are provided to consumers, in addition to the requirements set out in Articles 7 and 9 of the MCD:

- (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. [Article 22(3) of the MCD]

(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. [Article 22(4) of the MCD]

(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. [Article 22(5) of the MCD]

(6) Advisory services shall only be provided by creditors or credit intermediaries. [Article 22(6) of the MCD]

(7) This regulation is without prejudice to Article 16 of the MCD and to the competence of national authorities 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. [Article 22(7) of the MCD]

Part IX (Creditworthiness Assessment)

Obligation to assess the creditworthiness of the consumer

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. [Article 18(1) of the MCD]

(2) Creditors shall establish, document and maintain the procedures and information on which the assessment referred to in sub-regulation (1) is based. [Article 18(2) of the MCD]

(3) The assessment of creditworthiness shall not rely predominantly on the value of the residential immovable property exceeding the amount of the credit falling within the scope of these regulations in accordance with regulation 3 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. [Article 18(3) of the MCD]

(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 12A. [Article 18(4) of the MCD]

(5) The creditor shall only make the credit falling within the scope of these regulations in accordance with regulation 3 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. [Article 18(5) of the MCD]

(6) The creditor shall, in accordance with the Article 10 of the Data Protection Directive, inform the consumer in advance that a database is to be consulted. [Article 18(5)(b) of the MCD]

(7) Where an application for credit falling within the scope of these regulations in accordance with regulation 3 is rejected, the creditor shall inform the consumer without delay of the rejection in accordance with regulation 10. [Article 18(5) of the MCD]

(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. [Article 18(6) of the MCD]

(9) This regulation shall be without prejudice to the Data Protection Directive. [Article 18(7) of the MCD]

Creditworthiness assessment

10. (1) Where the assessment of the consumer's creditworthiness results in a negative prospect for his ability to repay the credit falling within the scope of these regulations in accordance with regulation 3 over the lifetime of the credit agreement, the creditor shall refuse to provide such credit.

(2) Where the application for credit falling within the scope of these regulations in accordance with regulation 3 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 falling within the scope of these regulations in accordance with regulation 3 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.

Agreement to change the total amount of credit

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.

Consumer's personal and financial situation

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 credit agreement.

Disclosure and verification of consumer information

12A. (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. [Article 20(1) of the MCD]

(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 falling within the scope of these regulations in accordance with regulation 3: [Article 20(1) of the MCD]

Provided that such information shall be appropriately verified, including, when necessary, through reference to independently verifiable documentation. [Article 20(1) of the MCD]

(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. [Article 20(2) of the MCD]

(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 timeframe within which the consumer needs to provide the information: [Article 20(3) of the MCD]

Provided that such request for information shall be proportionate and limited to what is necessary to conduct a proper creditworthiness assessment: [Article 20(3) of the MCD]

Provided further that, where necessary to enable the assessment of creditworthiness, creditors may seek clarification of the information received in response to that request. [Article 20(3) of the MCD]

(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: [Article 20(3) of the MCD – second para]

Provided that the creditor may terminate the credit agreement where it is demonstrated that the consumer knowingly withheld or falsified the information. [Article 20(3) of the MCD]

(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. [Article 20(4) of the MCD]

(7) The credit 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 falling within the scope of these regulations in accordance with regulation 3 cannot be granted. [Article 20(4) of the MCD]

(8) The warning referred to in sub-regulation (7) may be provided in a standardised format. [Article 20(4) of the MCD]

(9) This regulation shall be without prejudice to the Data Protection Directive, in particular Article 6 thereof. [Article 20(5) of the MCD]

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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

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. [Article 19(1) of the MCD]

(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. [Article 19(1) of the MCD – second sentence]

(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. [Article 19(1) of the MCD]

(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. [Article 19(2) of the MCD]

PART X (Rights of the Consumer)

Right to receive copy of the credit agreement

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.

(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

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 agreement, 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. [Article 27(1) of the MCD]

- (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: [Article 27(2) of the MCD]
- (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. [Article 27(4) of the MCD]

(3) The creditor shall make available to the consumer, free of charge and at any time throughout the duration of the credit agreement, 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

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. [Article 25(1) of the MCD]

(2) If the consumer pays the credit falling within the scope of these regulations in accordance with regulation 3 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 [Article 25(1) of the MCD]
- (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), 15(1)(g) and (h), so long as the early repayment falls within a period for which the borrowing rate is fixed: [Article 25(3) of the MCD]

Provided that said compensation shall not exceed the financial loss of the creditor and that no sanction is imposed on the consumer. [Article 25(3) of the MCD]

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. [Article 25(3) of the MCD]

(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 the right may be exercised. [Article 25(2) of the MCD]

(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. [Article 25(4) of the MCD]

(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: [Article 25(4) of the MCD]

Provided that any assumptions used shall be reasonable and justifiable. [Article 25(4) of the MCD]

Assignment of rights and set-off

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 articles 1196 to 1204 of the Civil Code, which shall apply irrespective of anything to the contrary contained in a credit agreement.

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

Foreign currency loans

17A. (1) 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. [Article 23(1) of the MCD]

(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. [Article 23(2) of the MCD]

(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. [Article 23(3) of the MCD]

(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. [Article 23(4) of the MCD]

(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. [Article 23(6) of the MCD]

(6) The Director General may further regulate foreign currency loans provided that such regulation is not applied with retrospective effect. [Article 23(5) of the MCD]

Variable rate credits

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. [Article 24 of the MCD]

Arrears and foreclosure

17C. (1) Creditors shall exercise reasonable forbearance before foreclosure proceedings are initiated. [Article 28(1) of the MCD]

(2) The Director General shall adopt measures to encourage creditors to exercise reasonable forbearance in accordance with sub-regulation (1). [Article 28(1) of the MCD]

(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. [Article 28(2) of the MCD]

(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. [Article 28(4) of the MCD]

(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. [Article 28(5) of the MCD]

(6) Where after foreclosure proceedings outstanding debt remains, the Director General shall ensure that measures to facilitate repayment in order to protect consumers are put in place. [Article 28(5) of the MCD]

PART XI (Obligations of the Consumer)

Obligation to disclose correct information

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 falling within the scope of these regulations in accordance with regulation 3.

(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.

PART XII (Requirements for Establishment and Supervision of Credit Intermediaries)

Admission of credit intermediaries

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. [Article 29(1) of the MCD]

(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.
[Article 29(2) of the MCD]

(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. [Article 29(2)(c) of the MCD]

(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. [Article 29(4) of the MCD]

(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. [Article 29(4) of the MCD]

(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; [Article 29(4) of the MCD]
- (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. [Article 29(4) of the MCD]

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

- (i) is a legal person, shall have its head office and its registered office in Malta;
- (ii) is not a legal person, shall have its head office in Malta and shall actually carry on its main business in Malta [Article 29(5) of the MCD]

(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. [Article 29(6) of the MCD]

(15) Without prejudice to regulations 18B and 18C, all admitted credit intermediaries shall comply with the requirements defined in sub-regulation (6) on a continuing basis. [Article 29(7) of the MCD]

(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. [Article 29(9) of the MCD]

Credit intermediaries tied to only one creditor

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. [Article 30(1) of the MCD]

(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 transposing the MCD. [Article 30(1) of the MCD]

(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 21B(7) and (8). [Article 30(1) of the MCD]

(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 transposing the MCD. In particular, the creditor shall be responsible for monitoring compliance with the knowledge and competence requirements of the tied credit intermediary and its staff. [Article 30(2) of the MCD]

Appointed representatives

18C. Maltese credit intermediaries shall not appoint appointed representatives. [Article 31(1) of the MCD]

Freedom of establishment and freedom to provide services by credit intermediaries (Malta as home Member State).

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 20(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:

- (i) financial institutions to consumers in a host Member State in which such financial institutions are not allowed to operate;
- (ii) 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. [Article 32(1) of the MCD]

(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. [Article 32(3) of the MCD]

(3) Within a period of one month after being informed in accordance with sub-regulation (2), the MFSA shall provide the relevant information to the Director General, who shall, not later than one month after the date of receipt of the notification received by the MFSA from the Maltese credit intermediary, notify the European regulatory authority of the host Member State concerned of:

- (i) the intention of the Maltese credit intermediary; and
- (ii) 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. [Article 32(3) of the MCD]

(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 by the Director General, inform the Maltese credit intermediary concerned of that notification. [Article 32(3) of the MCD]

(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). [Article 32(3) of the MCD]

(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. [Article 32(4) of the MCD]

Freedom of establishment and freedom to provide services by credit intermediaries (Malta as host Member State)

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:

- (i) 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
- (ii) 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. [Article 32(1) of the MCD]

(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. [Article 32(2) of the MCD]

(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 Director General of:

- (i) the intention of the European credit intermediary; and
- (ii) 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:

Provided that in such cases, the Director General shall provide the MFSA with any information received from the European regulatory authority. [Article 32(3) of the MCD]

(4) The MFSA shall use the information received in accordance with sub-regulation (3) to enter the necessary information into its register. [Article 32(3) of the MCD]

(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 Director General in accordance with Article 32(3) of the MCD. [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. [Article 32(4) of the MCD]

Withdrawal of admission of credit intermediaries

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; [Article 33(1)(a) of the MCD]
- (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; [Article 33(1)(a) of the MCD]
- (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; or
- (d) in the case of a credit intermediary admitted or holding an equivalent authorisation in a third country and which has been granted an admission in terms of these regulations to open a branch in Malta, has had its authorisation withdrawn in the third country within which the credit intermediary was authorised;

(2) Where Malta is the home Member State, the MFSA shall withdraw the admission granted to a credit intermediary in accordance with regulation 18F where such a credit intermediary:

- (a) has obtained the admission through false or misleading statements or any other irregular means; [Article 33(1)(b) of the MCD]
- (b) no longer fulfils the requirements under which admission was granted; [Article 33(1)(c) of the MCD]
- (c) has seriously or systematically infringed the provisions of these regulations governing the operating conditions for credit intermediaries; [Article 33(1)(e) of the MCD]
- (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; [Article 33(1)(d) of the MCD]
- (e) conceals from, or fails to notify to the MFSA 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; [Article 33(1)(d) of the MCD]

- (f) is declared bankrupt or, where the credit intermediary is a legal person, goes into liquidation or is otherwise dissolved; [Article 33(1)(d) of the MCD]
- (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 [Article 33(1)(d) of the MCD]
- (h) has insufficient assets to cover its liabilities. [Article 33(1)(d) of the MCD]

(3) Where the admission of a credit intermediary is withdrawn by the MFSA in accordance with sub-regulation (2), the MFSA shall immediately notify the Director General, who shall notify the European regulatory authority of the relevant host Member States of such withdrawal as soon as possible and at the latest within fourteen days of the date of withdrawal, by any appropriate means: [Article 33(2) of the MCD]

Provided that for the purposes of this sub-regulation, the MFSA shall provide the Director General with all the necessary information in a timely manner.

(4) The MFSA shall, without undue delay, delete from the register referred to in regulation 18A any credit intermediaries whose admission has been withdrawn. [Article 33(3) of the MCD]

(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 article.

PART XIII (Miscellaneous)

Advertising

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. [Article 10 of the MCD]

(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. [Article 11(1) of the MCD]

(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 or by a surety;

- (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 falling within the scope of these regulations in accordance with regulation 3;
- (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. [Article 11(2) of the MCD]

(4) The information listed in sub-regulation (3) other than that listed in points (a), (b) or (j), 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. [Article 11(3) of the MCD]

- (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. [Article 11(4) of the MCD]

(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. [Article 11(5) of the MCD]

(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 those requirements to the European Commission without delay. [Article 11(6) of the MCD]

- (8) This regulation shall be without prejudice to Directive 2005/29/EC. [Article 11(7) of the MCD]

Tying and bundling practices

19A. (1). Whilst bundling practices shall be allowed, tying practices shall be prohibited. [Article 12(1) of the MCD]

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

Provided that creditors 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. [Article 12(4) of the MCD]

Cross-border access

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. [Article 21(1) of the MCD]

(2) Any conditions imposed for access to the databases referred to in sub-regulation (1) shall be non-discriminatory. [Article 21(1) of the MCD]

(3) Sub-regulation (1) shall apply both to databases which are operated by private credit bureaux or credit reference agencies and to public registers: [Article 21(2) of the MCD]

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. [Article 21(3) of the MCD]

Annual percentage rate of charge.

21. (1) The APRC shall be calculated in accordance with the mathematical formula set out in the Second Schedule. [Article 17(1) of the MCD]

(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 falling within the scope of these regulations in accordance with regulation 3 or to obtain it on the terms and conditions marketed. [Article 17(2) of the MCD]

(3) The calculation of the APRC 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. [Article 17(3) of the MCD]

(4) In the case of credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, in the charges contained in the APR but unquantifiable at the time of calculation, the APRC 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. [Article 17(4) of the MCD]

(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 APRC 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. [Article 17(5) of the MCD]

(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 APRC at least by means of the ESIS, by providing the consumer with an additional APRC 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 APRC, 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 APRC is provided for in the ESIS. [Article 17(6) of the MCD]

(7) Where applicable, the additional assumptions set out in the Second Schedule shall be used in calculating the APRC. [Article 17(7) of the MCD]

Flexible and reliable markets

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. [Article 26(1) of the MCD]

(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. [Article 26(1) of the MCD]

(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. [Article 26(2) of the MCD]

Enforcement and monitoring

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;
- (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; and
- (c) ensure that the rights granted to consumers by these regulations are not diminished by the provision of any other law:

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. [Article 34(6) of the MCD]

(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' 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) Any information submitted by a credit intermediary to the MFSA or to any officer, servant or agent of the MFSA shall be regarded as secret and confidential, except as between that credit intermediary and the MFSA:

Provided that the MFSA may provide any such information 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.

Investigations

22A. (1) 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.

(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.

(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 or any Credit Intermediaries' Rules made thereunder:

- (a) to produce to the 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 persons so appointed at such time and place as they may require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give, and those persons may take copies of or extracts from any documents produced to them under paragraph (a) above.

(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-article (4);
- (b) without lawful excuse fail to attend before the persons appointed under sub-article (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 recover from a credit intermediary reported on in terms of this regulation the costs and expenses incurred in relation to such report.

Right of entry to obtain information and documents

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 are 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 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 article.

Suspected offences

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-article or exercising the powers conferred by sub-article (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

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 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)

22F. (1) Maltese credit intermediaries shall comply with these regulations and shall be subject to supervision of their ongoing activities by the competent authorities: [Article 34(1) of the MCD]

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 regulations 4A, 5(1), 6, 7, 7A, 8, 8A, 8B, 12A, 19, 21 and 24A and with any measures adopted pursuant thereto by the host Member State concerned; and [Article 34(2) of the MCD]
- (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 competent authorities 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. [Article 34(3) of the MCD]

(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. [Article 34(1) of the MCD]

(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 4A, 5(1), 6, 7, 7A, 8, 8A, 8B, 12A, 19, 21 and 24A of the MCD, require the Maltese credit intermediary concerned to put an end to its irregular situation: [Article 34(2) of the MCD]

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 Director General. [Article 34(2) of the MCD]

(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: [Article 34(2) of the MCD]

Provided that where the competent authorities disagree 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. [Article 34(2) of the MCD]

(5) Where Malta is the home Member State and the European regulatory authority of a host Member State refers findings to the Director General 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 competent authorities shall take appropriate action:

Provided that where the competent authorities fail to take any such action within one month from obtaining those findings, or where, despite any such action taken by the competent authorities, 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 the MCD:

(a) after having informed the Director General, take all appropriate action needed to protect consumers and ensure the proper functioning of the markets, including by preventing the offending Maltese credit intermediary from 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: [Article 34(4) of the MCD]

(6) The Director General shall forward to the MFSA any information received from European regulatory authorities of host Member States in accordance sub-regulations (4) and (6).

(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 competent authorities 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 Director General to the European regulatory authority of the host Member State concerned. [Article 34(5) of the MCD – Malta home]

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

Supervision of credit intermediaries (Malta as host Member State)

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 competent authorities, and shall be subject to supervision by the competent authorities of their ongoing activities with respect to such obligations and measures: [Article 34(2) of the MCD]

Provided that where Malta is the host Member State, the competent authorities 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 Article 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. [Article 34(3) of the MCD]

(2) Where Malta is the host Member State and the competent authorities 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, the competent authorities shall require the European credit intermediary concerned to put an end to its irregular situation. [Article 34(2) of the MCD]

(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 competent authorities in accordance with sub-regulation (2), the competent authorities shall take appropriate action to ensure that the European credit intermediary concerned puts an end to its irregular situation:

Provided that the Director General shall, communicate the nature of such action to the European regulatory authority of the home Member State concerned. [Article 34(2) of the MCD]

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

Provided that in any such case, the Director General shall:

- (i) before taking appropriate action in accordance with this sub-regulation, inform the European regulatory authority of the home Member State concerned;
- (ii) inform the European Commission of any such action without undue delay; [Article 34(2) of the MCD]

Provided further that where the European regulatory authority of the home Member State concerned disagrees with any such action taken by the competent authorities, 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. [Article 34(2) of the MCD]

(5) Where Malta is the host Member State and the competent authorities 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 Director General 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. [Article 34(4) of the MCD]

(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) of 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 competent authorities shall take all appropriate action needed to protect consumers and ensure the proper functioning of the markets, including by preventing the offending European credit intermediary from initiating any further transactions in Malta:

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

Provided further that the Director General shall inform the European Commission and the EBA of any action taken by the competent authorities in accordance with this paragraph without undue delay;

- (b) 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. [Article 34(4) of the MCD]

(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 Director General, carry out on-site inspections in that branch: [Article 34(5) of the MCD – Malta host]

Provided that the Director General shall forward to the MFSA 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 with one another 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.

Obligation to Cooperate

22H. (1). The Director General shall cooperate with European regulatory authorities whenever necessary for the purpose of carrying out his duties under the provisions of the MCD, making use of its powers, whether set out in the provisions of the MCD or in national law. [Article 36(1) of the MCD]

(2) The Director General shall render assistance to European regulatory authorities and shall, in particular, exchange information and cooperate in any investigation or supervisory activities: [Article 36(1) of the MCD – second para]

Provided that in order to facilitate such assistance, the Director General shall take the necessary administrative and organisational measures: [Article 36(2) of the MCD]

Provided further that where a European regulatory authority requests the cooperation of the Director General, in particular the exchange of information, and the Director General 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. [Article 37 of the MCD]

(3) The Director General 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. [Article 36(2) of the MCD]

(4) The Director General 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. [Article 36(3) of the MCD]

(5) The Director General may, when exchanging information with European regulatory authorities, indicate at the time of communication that such information must not be disclosed without his 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 Director General gave his agreement: [Article 36(3) of the MCD]

Provided further that the European regulatory authority receiving this information from the Director General 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 Director General gave his 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 Director General, 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 Director General. [Article 36(3) of the MCD]

(6) Where the Director General 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 Director General may only exchange such information solely for the purposes for which the European regulatory authority concerned gave its agreement: [Article 36(3) of the MCD]

Provided that the Director General may transmit the information received to the MFSA 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 Director General shall immediately inform the European regulatory authority that supplied the information. [Article 36(3) of the MCD]

(7) The Director General 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 Director General shall notify the requesting European regulatory authority accordingly, providing as detailed information as possible: [Article 36(4) of the MCD]

(8) For the purposes of this regulation, the Director General and the MFSA shall collaborate closely and shall cooperate with one another 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 competent authorities of different Member States. [Article 37 of the MCD]

22I. (1) Where a request for cooperation, in particular the exchange of information, by the Director General 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 Director General 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 Director General 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.

Administrative fines and the right to appeal – powers of the Director General

23. (1) The Director General may impose an administrative fine, issue such order, or decision or take such measure as may be deemed 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 credit 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), 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.

Administrative fines and the right to appeal – powers of the MFSA

23A. (1) Without prejudice to the provisions of regulation 23, where any person 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, or any Credit Intermediaries' Rules issued thereunder, or such person has failed to comply with a directive issued by the MFSA under these regulations, or any Credit Intermediaries' Rules issued thereunder, the MFSA may, by notice in writing and without recourse to a court hearing, impose on such person an administrative fine 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 fine referred to in this sub-regulation, the MFSA shall be guided by the considerations referred to in regulation 23(4):

Provided further that the Director General shall not impose an administrative fine in respect of the same act or omission.

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

(3) Any person who is aggrieved by a decision and, or measure taken pursuant to these regulations or any Credit Intermediaries' Rules issued thereunder, by the MFSA, 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.

(4) 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 fine 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 Service Tribunal and fails within a period of fifteen days from the decision of the said Tribunal to pay the administrative fine as confirmed or as reduced by that Tribunal, then, in every case, the amount of the administrative fine, as originally imposed or as reduced, as the case may be, shall be due to the MFSA as a civil debt, and the provisions of sub-regulation (5) shall apply.

(5) A notice as is referred to in sub-article (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.

Publication of administrative fines

23B. (1) The MFSA may publish, on its official website and in any other media as it considers appropriate, any administrative fines imposed under the provisions of these regulations or any Credit Intermediaries' Rules issued thereunder. Such publications shall include information on the type and nature of the breach and the identity of the person on whom the administrative fine is imposed, without undue delay after that person is informed of those penalties:

Provided that in cases where an appeal has been filed by the person on whom such administrative fine or fines have been imposed, the 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

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. [Article 41(1) of the MCD]

(2) Any waiver by the consumer of any of the rights granted to him by these regulations shall be null and void. [Article 41(2) of the MCD]

(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 Mechanisms

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. [Article 39 of the MCD]

(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

25A. (1) These regulations shall not apply to credit agreements existing before 21 March 2016. [Article 43(1) of the MCD]

(2) Credit intermediaries already carrying out credit intermediation activities in terms of the definition “credit intermediary” in regulation 2 before 21 March 2016 and which have not yet been admitted in terms of these regulations ay 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. [Article 43(2) of the MCD]

(3) Creditors and credit intermediaries performing activities regulated by these regulations before 20 March 2014 shall comply with the national law transposing Article 9 by 21 March 2017. [Article 43(3) of the MCD]



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 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] (Where applicable) 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] (Where applicable) [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] (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. 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 Public's fees) associated with this loan.
8. Early repayment
(Where applicable) You do not have the possibility to repay this loan early. (Where applicable) You have the possibility to repay this loan early, either fully or partially. (Where applicable) [Conditions] [Procedure] (Where applicable) Exit charge: (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.
9. Internal complaint scheme
[Name of the relevant department] [Geographical address] [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 credit agreement.
- (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 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.

(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).

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 $1 \leq k \leq m$,

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.

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 (A_k), which will be positive or negative, in other words either paid or received during periods 1 to n, expressed in years, i.e.:

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

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 of credit and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the credit 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 points (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 points (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 point, 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:

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

THIRD SCHEDULE

[regulation 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 paragraph (c) of regulation 18A(7) shall include at least:
 - (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 paragraph (b) of the first subparagraph.