

July 2016

User Guidelines for the Home Loan (Amendment) Regulations (S.L.378.10)

Background and Scope of Home Loan (Amendment) Regulations

The purpose of the Home Loan (Amendment) Regulations, 2016 is to transpose and 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 – hereinafter referred to as the Mortgage Credit Directive (MCD).

These Regulations seek to reflect *“a common framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers secured by a mortgage or otherwise relating to residential immovable property, including an obligation to carry out a creditworthiness assessment before granting a credit, as a basis for the development of effective underwriting standards in relation to residential immovable property in the Member States, and for certain prudential and supervisory requirements, including for the establishment and supervision of credit intermediaries, appointed representatives and non-credit institutions.”*

Applicability of these Regulations

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.

These Regulations shall, on the other hand, not be applicable in relation 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 credit agreements which are secured by a hypothec or privilege on residential immovable property or secured by a right related to residential immovable property.

Obligations of Creditors and Financial Institutions:

- *Obligation to provide information free of charge to consumers*

Information provided to consumers in compliance with these Regulations shall be provided without any charge to the consumer.

- *Obligation in relation to conduct of business when providing credit to consumers*

When manufacturing credit products in relation to these Regulations, creditors and credit intermediaries shall act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers as further specified in regulation 5 of the Regulations.

- *Obligation to ensure the knowledge and competence requirements for staff*

Credit and credit intermediaries are required to ensure that their staff possess and 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 and any other ancillary services as established in regulation 6 of the Regulations.

- *Obligation to provide pre-contractual information*

Creditors and financial institutions shall ensure that as stated by regulation 7 of the Regulations, personalised information is provided to the consumer in order for the latter to be able to make a well-assessed informed decision on whether to proceed with the credit agreement. Such pre-contractual information shall also include adequate explanations as provided by regulation 7A of the Regulations.

All creditors, credit intermediaries and relevant institutions are also required by regulation 8 of the Regulations to ensure that all requisites required by the pre-contractual information are included.

- *Obligation on credit intermediaries to provide information*

Credit intermediaries shall, in good time before carrying out any credit intermediation activities, provide the consumer with the information listed in regulation 8A of the Regulations.

- *Obligation to abide to the standards for advisory services*

Creditors and credit intermediaries shall explicitly inform the consumer, in the context of a given transaction, whether advisory services are being or can be provided to the consumer. Furthermore, the consumer shall be provided, on paper or on another durable medium, all information requirements established in regulation 8B of the Regulations.

- *Obligation to assess the creditworthiness of the Consumer*

Prior to the conclusion of any creditworthiness assessment creditors shall ensure that proper creditworthiness assessments are carried out in relation to the consumer as provided in regulation 9. This assessment 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. In the case that the consumer fails such assessment, the creditor is bound not to proceed with such agreement as stated in regulation 10 of the Regulations.

- *Obligation to safeguard the rights of the consumer*

As stipulated from regulation 14 to 17B, all Creditors shall seek to ensure that all Rights of the Consumer are safeguarded. Such rights namely refer to the right to receive a copy of the agreement, rights concerning the content of the credit agreement, early repayment, assignment of rights and set-off, foreign currency loans, arrears and foreclosure and variable rate credits.

Admission of Credit Intermediaries

All credit intermediaries shall only proceed to act as such upon obtaining formal approval by the MFSA. The Regulations also state that Maltese credit intermediaries shall not appoint appointed representatives. Unless prohibited by these Regulations, such appointment of credit intermediaries shall be effective and may be exercised throughout the European Union, without further admission being required. Such admission may cease to have effect, upon notice by the MFSA in circumstances envisaged in regulation 18E.

General Obligations and Guidelines

Creditors and credit intermediaries shall ensure that any advertising and marketing communications concerning credit agreements shall be fair, clear and not misleading. Wording that may create false expectations for a consumer regarding the availability or the cost of a credit agreement are in particular prohibited. Furthermore, advertising 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 regulation 19 of the Regulations.

Creditors and credit intermediaries shall seek to abide by the Regulation that allows bundling practices whilst prohibiting tying practices. However, this is subject to the exceptions provided in regulation 19A.

Creditors shall have access to cross-border databases, for the sole purposes of monitoring consumers' compliance with the credit obligations over the duration of the agreement. In resorting to such databases, creditors shall seek to ensure that all information collected is solely intended for monitoring purposes, without any discrimination.

In calculating the annual-percentage rate of charge (APRC), all creditors and relevant credit intermediaries shall seek to ensure that the formula set out in the second schedule of the Regulations is followed.

Creditors are obliged to cooperate with the competent authorities, namely the Director General (Consumer Affairs) and MFSA. In default, the latter may impose administrative measures in furtherance of their functions. Provided that any creditor may seek redress with regards to any fine or sanction imposed on him in front of the Competition and Consumer Appeals Tribunal or the Financial Services Tribunal respectively.

Disclaimer: Since these are intended only as user guidelines, they only provide a summary of the legal instrument and of the obligations therein contained. Therefore these user guidelines do not in any manner provide a replacement of the legal instrument itself. Moreover any oversight, error or omission in these guidelines will not in any manner exempt users from honouring their legal obligations, as made mandatory by the published legal instrument.