

EQUITY RELEASE FINANCIAL PRODUCTS
RULEBOOK
CHAPTER 1 – REGISTRATION

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REVISIONS LOG

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INTRODUCTION

The purpose of this Rulebook is to supplement the Equity Release Financial Products Regulations by providing additional rules and guidance to Institutions desirous of engaging in the provision of Equity Release Financial Products.

For this purpose, the Rulebook lays out a set of rules governing the registration process, disclosure, sales processes and selling practices, valuation principles, complaints handling and record-keeping, reporting.

Credit institutions and financial institutions which are intent on offering Equity Release Financial Products shall be bound by the contents of this Rulebook.

Further, the contents of this Rulebook should be read in conjunction with, where applicable, the requirements of:

- Equity Release Financial Products Regulations;
- Banking Act;
- Banking Rules;
- Financial Institutions Act;
- Financial Institutions Rules;
- Any Conduct of Business Rules.

Title 1 Registration

Section 1 ERS List

R.1.1.1 An Institution providing, or holding itself out as providing, Equity Release Financial Products falling within the scope of the Regulations shall seek to register with the MFSA and enrol itself in the ERS List.

R.1.1.2 For the purpose of Rule R.1.1.1, the MFSA shall establish and maintain an ERS List, containing particulars of all Credit Institutions and Financial Institutions providing Equity Release Financial Products which are entitled under the Regulations and this Rulebook to be enrolled therein and which register with the MFSA in accordance with this Rulebook.

R.1.1.3 An Institution shall be entitled to be enrolled in the ERS List if the MFSA is satisfied with the documentation and information submitted to the MFSA in accordance with this Rulebook.

R.1.1.4 All applications for enrolment in the ERS List shall be filed in accordance with the MFSA's official application forms and shall be accompanied by a document providing a comprehensive description of all of the following:

1. the governance arrangements that the Institution intends to have in place in order to satisfy its obligations under the Regulations, including, but not limited to, those related to disclosures, sales processes and selling practices, remuneration principles, valuation and management of the property securing the Equity Release Financial Product, and consumer complaints. In establishing these arrangements, the Institution shall also have due regard to the principles prescribed by Regulation 13(1) of the Regulations;
2. the procedure in place to monitor, handle and follow up the granting of Equity Release Financial Product;
3. the marketing and sales processes that the Institution shall be adopting in relation to Equity Release Financial Products;
4. compliance and audit arrangements being set up with a view to taking all reasonable steps to protect the interests of consumers in the provision of Equity Release Financial Products, including, but not limited to, any training that will be provided to existing compliance officers, MLROs and internal auditors in relation to the provisions of Equity Release Financial Products, as well as Staff;
5. details of any new outsourcing arrangements that the Applicant shall enter into in connection with the provision of Equity Release Financial Products, including the submission of the draft outsourcing agreement;
6. copies of template terms and conditions, credit agreements and other product-related documentation that shall be provided to consumers, including, but not limited to, pre-contractual documentation and

- ongoing disclosures, in accordance with Chapter 2 of this Rulebook; and
7. detailed information on the experience of the Staff and certified true copies of qualifications held related to Equity Release Financial Products obtained during the last ten years of the employees that will be involved in the sales process of Equity Release Financial Products, commensurate to their role, in accordance with Section 2 of this Chapter.

R.1.1.5 Applicants shall propose an individual who shall be responsible for the provision of Equity Release Financial Products and the direct management or supervision of employees who are directly engaged in such activity. For this purpose, such employees shall report directly to this individual in respect of matters relating to the distribution of Equity Release Financial Products, who shall in turn liaise with the Compliance Officer on an ongoing basis for the Compliance Officer to be kept informed.

This identified individual shall be resident in Malta and together with the Compliance Officer shall also act as a point of contact with the MFSA on Equity Release Financial Products. The Institution shall immediately inform the MFSA in writing if this individual resigns.

For Credit Institutions, this individual shall form part of the senior management team of the Institution; in the case of Financial Institutions, the proposed individual shall be one of the directors of the Institution. This individual shall apply for registration in the ERS Register in accordance with Section 2 of this Chapter and shall be subject to the requirements applicable thereto, including, but not limited to, requirements in relation to qualifications, experience and knowledge and ability requirements.

Sub-Section 1 Additional requirements for Applicants being Financial Institutions

R.1.1.6 Where an Applicant is a Financial Institution, the following additional information and documentation shall be submitted, either separately or as part of the document compiled in accordance with Rule R.1.1.4:

1. a revised detailed business plan including the structure, organisation, management systems, governance arrangements and internal control systems of the Institution which demonstrates that these arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate for the provision of Equity Release Financial Products;
2. a copy of any new or revised draft policies and procedures that the Applicant intends to implement in the provision of Equity Release Financial Products, including, but not limited to, policies on valuations, policies on addressing consumer vulnerabilities and financial difficulties, policies on risk management to address the new risks that the Institution will be exposed to by offering Equity Release Financial Products, policies

on the assessment of knowledge and ability of employees engaged in the distribution of Equity Release Financial Products, and procedures on the repayment of the credit in accordance with the Regulations;

3. a copy of the policy of professional indemnity insurance, as detailed in Rules R.1.1.7 and R.1.1.8 or such other written evidence as the MFSA may require to establish compliance with the applicable rules thereof;
4. financial projections for the first three financial years which demonstrates that the Institution is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;
5. the revised projected level of financial resources requirement, that the Applicant is anticipating in view of the provision of Equity Release Financial Products, subject to the MFSA's discretion to set capital levels in accordance with FIR01. For this purpose, the Institution shall also indicate the source of any increase in its capital level (i.e. whether from existing shareholders or through the introduction of new shareholders) and provide details accordingly. As part of its assessment, the MFSA reserves the right to request other corroborative evidence in order to ascertain itself of the source of those additional funds and their legitimacy thereof.

R.1.1.7 Financial Institutions desirous of applying for enrolment in the ERS List must have in their favour a policy of professional indemnity insurance acceptable to the MFSA, indemnifying the Institution, and any individual employed by such Institution, or otherwise acting for such Institution. For this purpose, cover is required on a claims-made basis for legal liability in consequence of any negligent act, error or omission in the conduct of activities relating to the provision of equity release.

R.1.1.8 Financial Institutions shall ensure that the policy described in Rule R.1.1.7:

1. covers any legal liability in consequence of any negligent act, error or omission in the conduct of the business in connection with the provision of Equity Release Financial Products by the Financial Institution or any person employed by it or otherwise acting for it, including consultants under a contract for service with the Financial Institution;
2. covers legal defence costs which may arise in consequence of any negligent act, error or omission in the conduct of the business in connection with the provision of Equity Release Financial Products by the Financial Institution or any person employed by it or otherwise acting for it, including consultants under a contract for service with the Financial Institution;
3. includes any dishonest, fraudulent, criminal or malicious act, error or omission of any person at any time employed by the Financial Institution, or otherwise acting for it, including consultants under a contract for service with the Financial Institution;

4. covers libel, slander and defamation;
5. covers loss of and damage to documents and records belonging to the Financial Institution or which are in the care, custody or control of the Financial Institution or for which the Financial Institution is responsible; including also liability and costs and expenses incurred in replacing, restoring or reconstructing the documents or records; including also consequential loss resulting from the loss or damage to the documents or records;
6. covers any liability resulting from any breach of a provision of the Regulations, any breach of a rule made under this Rulebook, and any award resulting from any such breach;
7. claims made after expiry of the policy where the circumstances giving rise to the claim were notified to the insurers during the period of the policy;
8. the cover applies to the whole territory of the European Union and extends to all other territories from, in or to which services relating to Equity Release Financial Products are provided;
9. shall be governed by Maltese law; and
10. covers the minimum limits of indemnity given in Rule R.1.1.9.

R.1.1.9 The required minimum limits of indemnity shall be not less than €1,250,000 in respect of each and every claim and in the aggregate €1,850,000 per year for all claims.

If the policy is subject to an excess, this shall be for a sum not exceeding 0.5 per centum of the limit of indemnity and subject to a maximum of €23,300.

R.1.1.10 Where the Institution forms part of an international group of companies, the MFSA may accept that the professional indemnity insurance cover of the group is extended to provide cover to the Institution.

R.1.1.11 A Financial Institution shall within two working days from the date it becomes aware of any of the circumstances specified below, inform the MFSA in writing where:

1. during the period of a policy, the Financial Institution has notified insurers of an incident which may give rise to a claim under the policy;
2. during the period of a policy, the insurer has cancelled the policy or has notified its intention of doing so;
3. the policy has not been renewed or has been cancelled and another policy satisfying the requirements of this Section has not been taken out from the day on which the previous policy lapsed or was cancelled;
4. during the period of a policy, the terms or conditions are altered in any manner so that the policy no longer satisfies the requirements of Rule R.1.1.8;
5. the insurer has indicated that it intends to decline to indemnify the

- insured in respect of a claim under the policy;
6. the insurer has given notice that the policy will not be renewed or will not be renewed in a form which will enable the policy to satisfy the requirements of Rule R.1.1.8; or
 7. during the period of a policy, the risks covered by the policy, or the conditions or terms relating thereto, are altered in any manner.

Section 2 ERS Register

- R.1.2.1 Staff of an Institution enrolled in the ERS List, or of an Institution which has applied to the MFSA for such enrolment, who shall engage in the provision of Equity Release Financial Products on behalf of such Institution, shall apply for registration in the ERS Register.
- R.1.2.2 For the purpose of Rule R.1.2.1, the MFSA shall establish and maintain an ERS Register, containing particulars of Staff which are entitled under the Regulations and this Rulebook to be enrolled therein and which register with the MFSA in accordance with this Rulebook.
- R.1.2.3 A person shall be entitled to be registered in the ERS Register if he/she satisfies the MFSA that:
1. s/he is an individual;
 1. s/he is a fit and proper person to be so registered and to engage in the provision of Equity Release Financial Products;
 2. s/he possesses the qualifications and fulfils or complies with the requirements set out in the Rulebook and/or as may be otherwise determined by the MFSA from time to time; and
 3. s/he complies with the knowledge and ability requirements laid down in this Section.
- R.1.2.4 For the purpose of Rule R.1.2.3 (3), prior to the registration of Staff in the ERS Register, the MFSA shall be satisfied that such person:
1. holds a qualification in banking or equivalent, which covers, *inter alia*, the distribution of credit products, with a specific focus on Equity Release Financial Products, from an institute of repute recognised for such purpose by the MFSA and has adequate practical experience in the distribution of credit products; or
 2. has been involved, locally or overseas, in the distribution of credit products for a period of at least five years during the last ten years; or
 3. holds a qualification recognised by the MFSA for the purposes of this paragraph and has been involved in the distribution of credit products for a period of not less than five years during the last seven years; or
 4. has been employed in a managerial capacity by an Institution distributing credit products for a period of not less than five years during

- the last ten years; or
5. holds a qualification recognised by the MFSA for the purposes of this paragraph and has been employed in a managerial capacity by an Institution distributing credit products for a period of not less than three years during the last seven years; or
 6. has knowledge and practical experience relating to the distribution of credit products for a period of not less than seven years during the last ten years.

R.1.2.5

For the purpose of Rule R.1.2.3 (4), the knowledge and ability criteria that an individual must satisfy include the following:

1. *Legal aspects* – the individual shall possess the minimum necessary knowledge of the applicable laws governing the provision of Equity Release Financial Products and related ancillary services, relevant tax law and other relevant laws, such as inheritance laws;
2. *The financial and property market and participants* – the individual shall possess the minimum necessary knowledge of the general principles of Equity Release Financial Products (including knowledge on the product documentation, risks and fees) as well as knowledge of his/her role, duties and responsibilities towards the consumer. Staff shall also possess appropriate knowledge and understanding of the immovable property purchasing process, security valuation, the organisation and functioning of the land registers and the immovable property market in Malta more broadly;
3. *Ethics and professional conduct* – the individual shall possess the minimum necessary knowledge of this Rulebook; the ability to consider the best interests of the consumer in relevant circumstances connected with the provision of Equity Release Financial Products; the ability to behave at all times in a responsible manner (e.g. fair, non-aggressive and non-misleading behaviour); the ability to manage conflicts of interest that might arise in the course of providing Equity Release Financial Products; knowledge on complaints handling procedures including duties such as that to inform the consumer of the arrangements for handling complaints concerning the provision of Equity Release Financial Products including, the possibility of referring the matter to the Office of the Arbiter for Financial Services, without prejudice to the right of the consumer to take legal proceedings. Further, ethical conduct is of paramount importance in the provisions of Equity Release Financial Products. To this end, the individual shall possess the necessary knowledge and experience in order to be in a position to identify vulnerabilities of consumers seeking Equity Release Financial Products and any other related difficulties (financial or otherwise), and address those circumstances in an ethical manner. Ethical considerations by the individual are also to be taken into account in the marketing and distribution of Equity Release Financial Products, whereby such

individual shall possess the minimum necessary knowledge to refrain from engaging in deceptive and/or questionable marketing practices and/or deceptive selling techniques;

4. *Assessment of consumers' needs* – knowledge on the sales process and selling practices prescribed in Chapter 3 of this Rulebook;
5. *Information disclosure* – knowledge and ability to communicate effectively the general and particular terms and conditions of the contract; knowledge and ability to communicate effectively to the intended audience and to use clear and comprehensible language, avoiding jargon and technical terms where necessary; knowledge and ability to answer simple and complicated questions from actual or potential consumers; knowledge of the relevant provisions in relation to the disclosure requirements set out in Chapter 2 of this Rulebook;
6. *Financial competency* – the individual shall possess the minimum necessary financial competency. This shall include the appropriate skills and knowledge to demonstrate a level of financial knowledge which is relevant to the role being performed by the individual.

R.1.2.6 In order to assess the criteria set out in Rule R.1.2.3, the MFSA shall require such individual to:

- a. complete an application form in the manner set out by the MFSA;
- b. complete and submit a Personal Questionnaire;
- c. submit a suitability assessment carried out by the Institution listed, or to be listed, in the ERS List, in accordance with the MFSA's 'Circular to Licence Holders and Applicants for a Licence proposing individuals for an Approved Position' issued on 14 September 2018;
- d. fulfil the requirements indicated in Rules R.1.2.4 and R.1.2.5 of the Rulebook in relation to qualifications, experience and knowledge and ability requirements; and
- e. forward all the information necessary for the MFSA to ensure that such individual possesses the requisite knowledge and ability to engage in the provision of Equity Release Financial Products.

Section 3 Registration Considerations

R.1.3.1 When considering whether to enrol an Applicant in the ERS List or register an Applicant in the ERS Register, the MFSA shall *inter alia*, have regard to:

1. the protection of the consumers;
2. the promotion of competition and choice;
3. the reputation and suitability of the Applicant, its governance structures, the Applicant's financial stability and its internal systems and controls

and

4. complement the Central Bank of Malta in its role to ensure stability of the financial system.

R.1.3.2 In order to be able to grant authorisation to an Applicant to offer Equity Release Financial Products, the MFSA must be satisfied with the information and documentation provided in terms of this Chapter. For the purpose of its assessment, the Institution and other relevant parties may be required to provide additional information and documents in connection with the application.

The MFSA may also schedule a mandatory interview with Staff who applied to be included in the ERS Register, where it deems it necessary, conduct any further assessment.

R.1.3.3 The Institution must demonstrate sound and prudent management, robust governance arrangements and adequate internal control mechanisms specific to the provision of Equity Release Financial Products.

R.1.3.4 The business of the Institution in the provision of Equity Release Financial Products must be carried on with integrity, due care, diligence and the professional skills appropriate to the nature and scale of its activities. Further, Staff, including the director or senior manager entrusted with the supervision of such products in terms of Rule R.1.1.5 must also be a fit and proper person to hold that position.

Section 4 Registration Process

R.1.4.1 Applicants shall submit their application and supporting documents via email through aubankingfis@mfsa.com.mt. Any documentation requested in original should be submitted to the MFSA in hard copy.

R.1.4.2 The MFSA shall proceed to register the Institution or Staff in the ERS List or the ERS Register, as applicable, once the MFSA is satisfied that the criteria prescribed by this Chapter have been fulfilled. The MFSA will also notify the respective Institution and the Staff in writing.

R.1.4.3 The MFSA shall base its decision as to whether an Applicant has met the required standard on the basis of the information provided by the Applicant, any other information that ought to have been disclosed by the Applicant, and any other information which is already in the MFSA's possession. The MFSA shall not be liable in damages for any acts or omissions on the part of the Applicant.

R.1.4.4 Where an Institution and/or its Staff fail to satisfy the criteria prescribed by this Chapter, the MFSA will not register the Institution or the Staff in the ERS List or the ERS Register, as applicable.

R.1.4.5 An appeal to the MFSA's decision in relation to enrolment in the ERS List or registration in the ERS Register may be made to the Financial Services Tribunal in line with Article 21 of the Malta Financial Services MFSA Act.

Section 5 Transitional Provisions

R.1.5.1 Institutions which, on 1 September 2019, are performing activities regulated by the Regulations, shall, by 31 August 2020, comply with the Regulations, the applicable requirements set out in this Rulebook and any other rules issued by the MFSA.

R.1.5.2 By not later than 1 October 2019, Institutions which intend to avail themselves of the Transitional Period permitted under Rule R.1.5.1 are to notify the MFSA in writing of this intention.

R.1.5.3 Where notification to the MFSA is made pursuant to Rule R.1.5.2, Institutions are to submit to the MFSA the information and documentation prescribed by Rules R.1.1.4 to R.1.1.11, as applicable, within six months.

Section 6 Provision of Equity Release Financial Products by European Credit Institutions

R.1.6.1 Where Malta is the host Member State, and in addition to the requirements imposed by the European Passport Rights for Credit Institutions Regulations (S.L. 371.11 of the Laws of Malta), a European Credit Institution that is desirous of providing Equity Release Financial Products in Malta shall notify the MFSA of its intention prior to the provision of such services.

R.1.6.2 The notification shall include sufficient information to enable the MFSA to determine:

1. whether the European Credit Institution and its Staff meet the knowledge and ability requirements established by Rules R.1.2.4 and R.1.2.5, if the European Credit Institution is intent of providing such services through the establishment of a branch in Malta; or
2. whether the European Credit Institution and its Staff meet the knowledge and ability requirements in relation to (a) the legal aspects and (b) the financial and property market and participants, as established by Rule R.1.2.5, if the European Credit Institution is intent of providing such services in Malta under the freedom of services regime (i.e. without establishing a branch in Malta).

R.1.6.3 The notification shall be made in writing to the MFSA.

R.1.6.4 Following receipt of the notification, the MFSA shall have the power to require European Credit Institution to provide such evidence as the MFSA may require, for the MFSA to establish compliance with the knowledge and ability criteria

referred to in Rule R.1.6.2.

R.1.6.5 The European Credit Institution shall not commence activities in relation to the provision of Equity Release Financial Products unless:

1. the European Credit Institution has received a communication from the MFSA acknowledging receipt of the notification referred to in Rule R.1.6.1 and, if necessary, indicating any applicable conditions in the interests of the general good; or
2. two months have elapsed from the date of receipt of the notification referred to in Rule R.1.6.1, and no communication has been received from the MFSA.

Section 7 Fees

R.1.7.1 Any person applying for registration in the ERS Register or enrolment in the ERS List, Managers List or restoration of a name to the ERS Register or the ERS List, shall, upon submission of the application, irrespective of whether the application is eventually accepted or not, pay to the MFSA the application fee of € 7,000.

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