

EQUITY RELEASE FINANCIAL PRODUCTS RULEBOOK
CHAPTER 2 – DISCLOSURES

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DEFINITIONS/GLOSSARY

<u>Advertisement</u>	shall have the same meaning as that assigned to it in the Regulations
<u>Advisory Services</u>	shall have the same meaning as that assigned to it in the Regulations
<u>Annual Percentage Rate of Charge or APRC</u>	shall have the same meaning as that assigned to it in the Regulations.
<u>Applicant</u>	shall mean a credit institution or financial institution that applies for registration in the ERS List
<u>Authority</u>	shall mean the Malta Financial Services Authority
<u>Consumer</u>	shall mean any individual who has attained pension age, as defined in the Social Securities Act (Chap. 318 of the laws of Malta), and who is acting for purposes which are not related to and outside his trade, business, craft or profession
<u>Credit Agreement or Agreement</u>	shall mean an agreement whereby an Institution, grants or promises to grant credit in the form of an Equity Release Financial Product, and shall be distinct from the public deed of loan
<u>Credit Institution</u>	shall have the same meaning as that assigned to it in the Banking Act and which is licensed by the Authority in terms of Article 5 of the Banking Act
<u>Distance Contract</u>	shall mean any Credit Agreement concerning an Equity Release Financial Product concluded between an Institution and a Consumer under an organised distance sales or service-provision scheme run by the Institution, who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded
<u>Durable Medium</u>	shall mean any instrument which: 1. 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 2. allows the unchanged reproduction of the information stored
<u>Equity Release Financial Products or Product(s)</u>	shall have the same meaning as that assigned to it in the Regulations
<u>Equity Release Transaction</u>	shall mean a transaction involving equity release financial products
<u>ERS List</u>	shall mean the list of institutions engaged in the provision of equity release financial products established and maintained by the Authority in terms of Rule R.1.1.2
<u>ERS Register</u>	shall mean the register established in terms of Rule R.1.2.2
<u>European credit institution</u>	shall have the same meaning as that assigned to it in the European Passport Rights for Credit Institution Regulations (S.L. 371.11 of the Laws of Malta)
<u>Financial Institution</u>	shall mean any person who undertakes the carrying out of activity 1 of the First Schedule to the Financial Institutions Act – lending – for the account and at the risk of the person carrying out the activity; provided that such person shall hold the necessary licence to carry out such activity in terms of Article 3 of the Financial Institutions Act, irrespective of whether it engages in the provisions of equity release financial products on a regular and habitual basis or otherwise
<u>Information</u>	shall mean any material provided to Consumers or potential Consumers by the Institution with the purpose of informing such Consumers or potential Consumers of any Equity Release Financial Product or aspect related thereto

<u>Information Document</u>	shall have the same meaning as that assigned to it in the Regulations
<u>in good time</u>	in determining what constitutes disclosure of Information in good time, the Institution shall have regard to: 1. the Consumer's need for sufficient time to read, understand and take a decision on the basis on such disclosed Information; 2. any specific circumstances or urgency, if any, which would affect the Consumer's decision to be made on the basis on such disclosed Information; and 3. the nature of the Equity Release Financial Product which is the subject of the disclosure.
<u>Institution</u>	shall mean a credit institution or financial institution to which this Rulebook applies
<u>Mental Capacity</u>	shall mean a consumer's ability to make a decision in relation to equity release financial products, in particular whether or not a consumer has the ability to understand, remember, and weigh up relevant information will determine whether the consumer is able to make a responsible decision in relation to equity release financial products based on that information
<u>Personalised Information</u>	shall mean information of a personal nature, relating to the Consumer, required in order for the Institution to compare the Equity Release Financial Products available on the market, assess their implications and make an informed decision on whether to conclude a Credit Agreement
<u>Regulations</u>	shall mean the Equity Release Financial Products Regulations (S.L. 371.21 of the Laws of Malta)
<u>Rulebook</u>	shall mean this Equity Release Financial Products Rulebook
<u>Social Media</u>	shall mean all websites and digital applications that enable users to create and share content or participate in social networking. The following is a non-exhaustive list: blogs, microblogs (Twitter), social and professional networks (Facebook, LinkedIn, Google+), forums, image and video-sharing platforms (YouTube, Instagram, Vine, Pinterest)
<u>Staff</u>	Shall have the same meaning as that assigned to it in the Regulations

Chapter 2 Disclosures

Disclosures should be made in a comprehensible form in such a manner that Consumers are reasonably able to understand the nature and risks of the Equity Release Financial Product to be provided by the Institution and of the type of Equity Release Financial Product that is being offered, and consequently to take decisions on an informed basis. Furthermore, any Advertisements issued by the Institution should be fair, clear and not misleading. Certain disclosures are to be made in good time prior to the provision of the Equity Release Financial Product or conclusion of the Equity Release Transaction, such that the Consumer has adequate time to process the Information resulting from the disclosures made before deciding whether to purchase such Equity Release Financial Product or otherwise.

To this end, this Chapter deals with the disclosures an Institution is required to make to a Consumer, and the manner in which an Institution is required to communicate with the Consumer. In particular, this Chapter aims to ensure that all material Information about the Institution itself and about the Equity Release Financial Products which the Institution provides or may provide to the Consumer, as well as any real or potential conflicts of interest, is duly disclosed.

This Chapter applies to all Institutions engaged in the provision of Equity Release Financial Products.

Section 1 **General**

R.2.1.1 Disclosures by Institutions should be made in a comprehensible form in such a manner and via a Durable Medium, so as to permit Consumers to be reasonably able to understand the nature and assess the risks and implications of the Equity Release Financial Product being provided by the Institution and consequently to take decisions on an informed basis.

R.2.1.2 Disclosures are to be made in good time before the provision of Equity Release Financial Products, or before Consumers are bound by any Credit Agreements or offers relating thereto, such that Consumers have adequate time to process the Personalised Information provided by means of an Information Document which inter alia results from the disclosures made prior to Consumers deciding whether to accept an offer relating to the Equity Release Financial Product. Therefore, all relevant Information required in terms of Section 1 of this Chapter, should be provided to Consumers in good time.

R.2.1.3

The Institution shall make available clear and comprehensible all general information about Equity Release Financial Products at all times on paper or on another Durable Medium or in electronic form, and as much as possible, in plain English language or, upon the request of the Consumer, in the Maltese language, or in any other language agreed upon between the Institution and the Consumer.

For the purpose of this Rule R.2.1.3, 'general information' shall include, at least, the following:

- a) the identity, the business address of the Institution and the contact details necessary to enable Consumers to communicate effectively with the Institution including the contact details of the individual responsible for the provision of Equity Release Financial Products;
- b) the languages in which the Consumer may communicate with the Institution, and receive documents and other Information from the Institution;
- c) the methods of communication to be used between the Institution and the Consumer;
- d) a statement of the fact that the Institution is licensed and the legislation under which such licence has been authorised;
- e) a description of the conflicts of interest policy of the Institution, which may be provided in summary form;
- f) information relating to the procedures allowing Consumers or other interested persons to lodge a complaint;
- g) security that will be taken by the institution to secure repayment of the credit due under the Equity Release Financial Product, being, as applicable, a charge over the residence of the Consumer or a right relating thereto, and a charge over an adequate property insurance over such residence or a right relating thereto;
- h) a description of the types of Equity Release Financial Products available, including a short description of the differences between fixed and capped rate products and the related implications for the Consumer;
- i) a list of related cost elements, such as administrative costs, insurance costs and legal costs;
- j) an indication of the cost of a typical Equity Release Financial Product for the Consumer;
- k) the possible duration of the Credit Agreement;
- l) 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 to enable the Consumer to compare different offers;
- m) an indication of possible further costs, not included in the total cost of the credit to the Consumer, to be paid in connection with an Equity Release Financial Product;

- n) the range of different options available for reimbursing the credit to the Institution, including, where applicable, the number, frequency and amount of the regular instalments;
- o) a description of the conditions directly relating to early repayment, if applicable;
- p) that a valuation of the property is necessary and who is responsible for ensuring that the valuation is carried out, and whether any related costs arise for the Consumer;
- q) an indication of ancillary services the Consumer is obliged to, or is able to, acquire in order to obtain the Equity Release Financial Product 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 Institution;
- r) warning concerning possible consequences of non-compliance with the commitments linked to the Equity Release Financial Product, and the risks associated with Equity Release Financial Products more broadly.

Such warnings should feature prominently in accordance with the requirements of this Chapter. As a minimum, and without prejudice to any additional warnings required in terms of this Rulebook, the following text or such other wording as appropriate in the particular circumstances may be used:

Warnings:

- **Your home is at risk if you fail to observe your commitments linked to the credit agreement governing the Equity Release Financial Transaction, including any ongoing repayments;**
- **Check that this Equity Release Financial Product will meet your needs if you want to move or sell your home or you want your family to inherit it. If you are in doubt, seek independent advice;**
- **You should only consider acquiring an Equity Release Financial Product as a last resort and you should first consider other options such as downsizing to a cheaper property or using existing savings;**
- **If your circumstances change you might not have enough money remaining to fund alternative accommodation, and money received through equity release may seriously alter the amount of benefits you are able to collect.**

R.2.1.4

Where in terms of the Regulations and these Rules, Information including but not limited to that provided via the Information Document, is required to be disclosed to Consumers in a Durable Medium, it shall be:

- a) disclosed free of charge;

- b) disclosed without undue delay after the Consumer has given the necessary details on his/her needs, financial situation and preferences; and
- c) up-to-date.

R.2.1.5 An Institution shall pay due regard to the Information needs of its Consumers, and communicate to them any Information in accordance with the Regulations, these Rules and in a way which is clear, fair and not misleading.

Sub-Section 1 Pre-Contractual Disclosures

R.2.1.6 An Institution shall provide the Consumer with the Personalised Information needed to compare the Equity Release Financial Products available on the market, assess their implications and make an informed decision on whether to conclude Credit Agreement:

- a) without undue delay after the Consumer has given the necessary information on his needs, financial situation and preferences, in accordance with Chapter 3 of this Rulebook;
- b) in good time before the Consumer is bound by any Credit Agreement or offer; and
- c) on paper or on another Durable Medium.

R.2.1.7 Staff of an Institution shall provide adequate explanations to a Consumer on the proposed Equity Release Financial Product and any ancillary services, if any, in order to place the Consumer in a position enabling him to assess whether the proposed Equity Release Financial Product and ancillary services, if any, are adapted to his/her needs and financial situation. Such adequate explanations shall include in particular:

- a) an explanation of the Information and terms included in the pre-contractual Information;
- b) the essential characteristics of the Equity Release Financial Product proposed, and how these are likely to address or otherwise the demands and needs of the Consumer pursuant to an assessment undertaken in terms of Chapter 3 of this Rulebook;
- c) the features of the Agreement which may operate in a manner which would have a significant adverse effect on the customer in a way which the Consumer is unlikely to foresee, including by emphasising the risks and warning statements pertinent to the Equity Release Financial Product;
- d) the effect of the exercise of any right to withdraw via early repayment from the Agreement, how and when this right may be exercised, and the costs and consequences that would arise in the context of early repayment; and
- e) where ancillary services are provided together with an Equity Release Financial Product, whether each component of the bundle can be

terminated separately and the implications for the Consumer of doing so.

The explanations shall be further adapted to the type of Consumer to whom the Equity Release Financial Product is being offered. By way of example, Staff must be sensitive to circumstances involving vulnerable Consumers and must follow the additional requirements set out under Section 3 of Chapter 3 in these instances.

- R.2.1.8 With respect to the above-mentioned requirement to give Consumers adequate explanations, where there is more than one Consumer acting together as 'joint borrowers', the Institution should consider whether it may be appropriate to give separate explanations to each Consumer and whether the explanation should be the same or different for each, rather than giving a single explanation to all of them jointly.
- R.2.1.9 An Institution shall, prior to entering into a Credit Agreement with a Consumer, provide him/her with an opportunity to ask questions about the Agreement, advise how to ask the Institution for further information and explanations and enable a Consumer to request and obtain further Information and explanations about the Credit Agreement without incurring undue costs or delays.
- R.2.1.10 In deciding on the level and extent of explanation required by R.2.1.9, the Institution should consider the information received from the Consumer pursuant to the requirements of Chapter 3 of this Rulebook. In particular, the following factors should also be taken into consideration:
- a) the amount and duration of the credit to be provided;
 - b) the actual and potential costs of the credit;
 - c) the risk to the Consumer arising from the credit (the risk to the Consumer is likely to be greater the higher the total costs of the credit relative to the Consumer's financial situation);
 - d) to the extent that it is evident, the Consumer's level of understanding of the Agreement, and of the Information and the explanation provided about the Agreement; and
 - e) whether the Credit Agreement is executed physically and face-to-face, or whether the Credit Agreement is otherwise provided over the internet.
- R.2.1.11 Even where a Consumer states or implies that there is no need for an explanation of the Credit Agreement, the Institution must continue to comply with the Rule, and at no time shall an Institution encourage or induce a Consumer to waive its rights to any Information which shall be provided to him/her by the Institution at any point prior to entering into a Credit Agreement, nor after, for the duration of such Agreement.

R.2.1.12 An Institution shall not require a Consumer to acknowledge that the Information and explanations provided thereto are adequate to satisfy the requirements imposed in terms of the Regulations, the Rules or any other applicable laws.

R.2.1.13 An Institution may require an acknowledgement that it has provided an explanation, of receipt of any written Information that forms a part of the explanation, and of a declaration that the Consumer has understood an explanation given, but not an acknowledgement as to its adequacy.

R.2.1.14 An Institution shall inform the Consumer in writing through a Durable Medium that the Consumer is entitled to a full fourteen (14) day period before the conclusion of a Credit Agreement, in order to ensure that sufficient time to compare offers, assess their implications and make an informed decision, is allowed to the Consumer.

R.2.1.15 In the case of voice telephony communications, the commercial purpose of the call initiated by the Institution shall be made explicitly clear at the beginning of any conversation with the Consumer, and as referred to in regulation 5(3) of the Distance Selling Regulations, the description of the main characteristics of the Equity Release Financial Product to be provided in accordance with sub-paragraph (ii) of the proviso to sub-regulation (3)(a) of Regulation 5 of the Distance Selling Regulations, shall include, at least, the following items:

- a) the main features of the Equity Release Financial Product;
- b) the interest rates and other costs;
- c) the frequency and number of payments to be made, where applicable; and
- d) the amount of each instalment, where applicable.
- e)

R.2.1.16 The Institution shall, at the time of the provision of an offer binding on the Institution, provide the Consumer with a copy of the draft conditions to be eventually entered into the Credit Agreement.

Sub-Section 2 ***Disclosures where an Equity Release Financial Product is provided through the internet***

R.2.1.17 Where a Creditor discloses Information to a Consumer by means of a website, and where that Information is not addressed personally to the Consumer, the following conditions must be satisfied:

- a) the provision of that Information in that medium is appropriate to the context in which the business between the Creditor and the Consumer is, or is to be, carried on;
- b) the Consumer shall specifically consent to the provision of that Information in that form;

- c) the Consumer shall be notified electronically of the address of the website, and the place on the website where the Information may be accessed;
- d) the Information must be up to date; and
- e) the Information must be accessible continuously by means of that website for such period of time as the Consumer may reasonably need to consult it, capable of being downloaded and stored in a Durable Medium.

R.2.1.18 Where the Information to be disclosed in a Durable Medium, is disclosed by the Creditor using a Durable Medium other than paper, a paper copy shall be provided to the Consumer upon request and free of charge.

R.2.1.19 Where in the course of providing an Equity Release Financial Product, a Creditor provides or performs services relating thereto through the internet, the internet site shall satisfy the conditions indicated in Rule R.2.1.20 which the Creditor is required to comply with, when operating such site and should, as a minimum, include the Information indicated under Rule R.2.1.21.

R.2.1.20 Where the Equity Release Financial Product, or a service(s) performed in relation thereto, is carried on through the internet, the following conditions shall be satisfied at all times:

- a) the Creditor assumes full responsibility for all Information that is communicated or displayed on the internet site and of the overall quality of such Information communicated or displayed thereon;
- b) the individual proposed in terms of R.1.1.5 of Chapter 1 of this Rulebook shall act as a main point of contact with the Authority in respect of the said site;
- c) the Creditor shall ensure that all data and Information explained on the internet site is complete and constantly updated;
- d) the Creditor shall ensure that the appropriate warnings and disclaimers can be viewed in the same browser format as the rest of the site so as to be visible to all visitors to the site;
- e) the Creditor includes appropriate statements which clarify that the Consumer or prospective Consumer is leaving the internet site and accessing another in cases where the internet site of the Creditor is hyperlinked to other sites.
- f)

R.2.1.21 The internet site shall, as a minimum, include the following Information:

- a) the identity, the business address of the Institution and the contact details necessary to enable Consumers to communicate effectively with the Institution including the contact details of the individual responsible for the provision of Equity Release Financial Products;

- b) a statement that the Creditor is authorised to provide Equity Release Financial Products and enrolled in the ERS List;
- c) a list of jurisdictions in which the Creditor is registered, authorised or otherwise enrolled to provide Equity Release Financial Products. The term “authorised” includes a Creditor establishing a branch or providing services in a Member State or an EEA State in exercise of a European right;
- d) the minimum criteria that a Consumer must satisfy in order to be eligible for the purchase of an Equity Release Financial Transaction, including that: the Consumer be an individual who has attained pension age, as defined in the Social Security Act; act for purposes which are not related to and outside his trade, business, craft or profession; the immovable property in question must be owned by the Consumer; and the immovable property in question must be the main residence of the Consumer;
- e) the warning statements provided for under Rule R.2.1.3(r); and
- f) contact details of the officer of the Creditor responsible for consumer complaints and Information that complaints may be referred by the complainant to the Office of the Arbiter for Financial Services established under the Arbiter for Financial Services Act (Cap. 555 of the laws of Malta), if the complainant is not satisfied with the manner in which his complaint has been resolved by the Creditor.

R.2.1.22

g) Where a Creditor communicates with Consumers by means of a website, it must ensure that it has in place appropriate arrangements in order to record all the specific Information disclosed to the Consumer by means of its website, including dated logs of such disclosures, in order to demonstrate that it has complied with all its regulatory requirements.

Sub-section 3***Disclosures made in (or in relation to) the Credit Agreement***

R.2.1.23

Credit Agreements shall be drawn up in writing or in a Durable Medium, and shall specify as much as possible, in plain and intelligible language that can be easily understood by Consumers, the following:

- a) the purpose for which the credit may be used;
- b) the forms of security, including, where applicable, the possibility for it to be located in another Member State;
- c) a list of related cost elements, such as administrative costs, insurance costs and legal costs;
- d) the possible duration of the Credit Agreement;
- e) an indication of possible further costs, not included in the total cost of the credit to the Consumer, to be paid in connection with an Equity Release Financial Product;
- f) the identities and geographical addresses of the contracting parties;

- g) 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 assumptions used in calculating that rate shall be mentioned;
- h) the right of the Consumer to receive, on request and free of charge, at any time throughout the duration of the credit, a statement of account;
- i) the procedure to be followed in exercising the right of termination of the Credit Agreement;
- j) information concerning the right resulting under Regulation 23 and the conditions attached to that right;
- k) 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; and
- l) where applicable, other contractual terms and conditions.
- m)

R.2.1.24 A Creditor shall ensure that the terms of any document(s) or Credit Agreements entered into with Consumers for, or in relation to, the provision of an Equity Release Financial Product, are fair, clear and not misleading, and are compliant with the Regulations, this Rulebook, and any other applicable law.

R.2.1.25 A Creditor shall establish a record that includes the document(s) and Credit Agreements agreed between the Creditor and Consumers that set out the essential rights and obligations of the parties, and the other terms on which the Creditor will provide the Equity Release Financial Product to Consumers.

Sub-section 4 Disclosures made to the Authority

R.2.1.26 An Institution shall, when requested in writing by the Authority, assist and provide the Authority in a timely manner, with any Information which the Authority may require, and to provide clear and general Information to Consumers on Equity Release Financial Products, in order to guide Consumers, especially those entering into an Equity Release Financial Product for the first time.

R.2.1.27 A Creditor, and every officer thereof, shall take all reasonable steps to ensure that no incorrect Information is provided to the Authority, or any Consumer, either wilfully or as the result of gross negligence.

Sub-section 5 Other Disclosures

R.2.1.28 An Institution shall not, in any communication or agreement with a Consumer (except where permitted by applicable legislation), exclude or restrict, or seek to exclude or restrict:

- a) any legal liability or duty of care to a Consumer which it has under applicable law or under these Rules;
- b) any other duty to act with skill, care and diligence which is owed to a Consumer in connection with the provision to that Consumer of a Product; or
- c) any liability owed to a Consumer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of a Product or Service.

R.2.1.29 An Institution shall make available to the Consumer, on request and free of charge and at any time during the duration of the Equity Release Financial Product, a statement of account in the form of an amortisation table.

R.2.1.30 Every public deed of loan to which the Regulations apply shall make a direct reference to the Equity Release Financial Product entered into and between the Institution 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 Institution as may be amended from time to time according to the terms thereof.

R.2.1.31 Where a Consumer seeks to discharge his obligations under a Credit Agreement before the agreed termination of the Credit Agreement, the Institution 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.

R.2.1.32 The Information referred to in Rule R.2.1.31, 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, provided that any assumptions used shall be reasonable and justifiable.

R.2.1.33 Where the rights of the Institution under a Credit Agreement are, or the Agreement itself is, assigned to a third party, the Consumer shall be informed of such assignment except where the original Institution, by Agreement with the assignee, continues to service the credit vis-à-vis the Consumer.

R.2.1.34 Where the Credit Agreement allows for variations in the borrowing rate, Institutions shall inform Consumers of the possible impacts of variations on the amounts payable and on the annual percentage rate of charge at least by means of the Information Document, by providing the Consumer with an additional annual percentage rate of charge which illustrates the possible risks linked to a significant increase in the borrowing rate:

Provided that this Rule R.2.1.34 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 annual percentage rate of charge is provided for in the Information Document.

R.2.1.35 An Institution shall ensure that any designation given to its employees reflects the service being provided by such employee. The employee shall clearly disclose whether he is authorised to provide Advisory Services.

R.2.1.36 Institution shall ensure that the Information it addresses to, or disseminates to Consumers, including marketing communications, complies with the following conditions:

- a) the Information includes the name of the Institution;
- b) the Information is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of a Product;
- c) the Information uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the Information provided, as well as a layout ensuring such indication is prominent;
- d) the Information is sufficient for, and presented in a way that is likely to be understood by, the average Consumer, or by whom it is likely to be received;
- e) the Information does not disguise, diminish or obscure important items, statements or warnings;
- f) the Information is consistently presented in the same language throughout all forms of Information and marketing materials that are provided to each Consumer, unless the Consumer has accepted to receive Information in more than one language; and
- g) the Information is up to date and relevant to the means of communication used.

R.2.1.37 An Institution shall explain to the Consumer his duty to disclose all circumstances material to an Equity Release Financial Product being provided and the consequences of any failure to make such a disclosure, both before the Product is provided and throughout the Equity Release Transaction's duration. The Institution shall also take account of the Information which the Consumer discloses.

R.2.1.38 An Institution must not unfairly disclose or threaten to disclose Information relating to the Consumer's debts under the Credit Agreement, to a third party.

R.2.1.39 When contacting a Consumer, an Institution should take reasonable steps to ensure that the privacy of the Consumer is protected, including by ensuring that post sent by the Institution is properly addressed to the Consumer and marked "private and confidential" or an expression to the same effect.

R.2.1.40 Upon termination of a Credit Agreement, the Institution shall ensure that an individual visiting the Consumer's heirs, on its behalf:

- a) clearly explains to the heirs the purpose and intended outcome of the proposed visit; and
- b) gives the heirs adequate notice of the date and likely time (at a reasonable time of day) of the visit.

R.2.1.41 Where, at the initial visit the heir indicates a preference to use the first visit to agree a more convenient time for a future visit, the person pursuing recovery of the debt should respect the heir's wishes. It is important that the heir is given reasonable time to prepare for a visit and should not be coerced or pressurised into immediate discussions or decisions.

Sub-section 6 ***Disclosure of applicable costs and charges***

R.2.1.42 An Institution shall, in good time, prior to providing an Equity Release Financial Product to a Consumer, disclose to such Consumer information relating to all direct and indirect costs and associated charges related to the Equity Release Financial Product, which must as a minimum and where relevant include the costs relating to: Advisory Services, any third party payments, fees relating to property valuation, legal fees, and medical fees (including those incurred in ascertaining the existence or otherwise of Mental Capacity limitations for example). The Institution should also specify how the Consumer may pay such costs.

R.2.1.43 The information referred to in Rule R.2.1.42, including costs and charges in connection with the Equity Release Financial Products disclosed to the Consumer, shall be aggregated to allow the Consumer to understand the overall cost of the Equity Release Financial Product, and where the Consumer so requests, an itemised breakdown of such costs shall be disclosed. Where applicable, such information shall be disclosed to the Consumer on a regular basis, at least annually, for the duration of the Credit Agreement.

R.2.1.44 In good time prior to providing a Product to a Consumer, an Institution should provide the Consumer on a Durable Medium, a breakdown of all charges, including third party charges, which will be passed on to the Consumer and where such charges cannot be ascertained in advance, notify the Consumer that such charges will be levied as part of the transaction.

R.2.1.45 An Institution shall display in its public offices, in a manner that is easily accessible to Consumers, a schedule of fees and charges imposed by that Institution related to provision of Equity Release Financial Products. If the Institution has a website, it should also include in it its schedule of fees and charges.

The institution shall ensure that the Schedule of fees and charges is kept updated at all times.

- R.2.1.46 A disclosure made under Rule R.2.1.45, shall:
- a) be in cash terms (non-cash terms should be converted into illustrative cash equivalents);
 - b) if there are payments over a period of time, include the amount and frequency of each payment due, and the implications of early repayment.

- R.2.1.47 An Institution shall disclose the duty on documents and any other tax payable by the Consumer on the purchase of the Product separately to any charges or fees.

Section 2 *Marketing Rules and Advertisements*

- R.2.2.1 Advertisements, marketing communications and Information concerning Equity Release Financial Products 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 an Equity Release Financial Product shall be prohibited. In issuing, approving or disseminating Advertisements, the Institution shall ensure that:

- a) Advertisements are clearly identifiable as such;
- b) the design, presentation and content of an Advertisement is clear, fair, and accurate and not misleading such that any Consumer can reasonably be expected to know immediately that it is an Advertisement;
- c) the Advertisement shall not seek to influence a person's attitude to the advertised Product or the Institution either by ambiguity, exaggeration or omission;
- d) the nature and type of the advertised Product or Service shall be clear and shall not be disguised in any way;
- e) important items, statements or warnings are not disguised, diminished or obscured; and
- f) it avoids taking any improper advantage of any characteristic or circumstances that may make the Consumer vulnerable.

- R.2.2.2 Without prejudice to the generality of R.2.2.1, an Institution shall ensure that any Advertisement and Information is not misleading in relation to:

- a) the nature of the advertised Equity Release Financial Product;
- b) the Institution's ability to provide the advertised Equity Release Financial Product or any ancillary services and about the nature and type of such product or service;
- c) the scale of the Institution's activities;
- d) the nature of the Institution's, or any other person's involvement in the advertised Product or service; and

- e) any relevant risks and, in particular, shall not emphasise any potential benefits of an Equity Release Financial Product or any ancillary services without also giving a fair and prominent indication of relevant risks.

For the purpose of this Rule R.2.2.2, an Advertisement or other Information provided to Consumers should be considered to be 'misleading' if it has a tendency to mislead the person or persons to whom it is addressed or by whom it is likely to be received, whether or not the person who issues the Advertisement considers or intends it to be misleading.

R.2.2.3 These Rules shall not apply where the Advertisement approved or disseminated, or the Information provided, consists only of one or more of the following:

- a) the name of the Institution;
- b) a logo or other image associated with the Institution;
- c) a contact point;
- d) a reference to the Equity Release Financial Product or any ancillary services provided by the Institution.
- e)

R.2.2.4 An Institution shall ensure that Advertisements or Information it approves or circulates shall:

- a) be sufficient for, and presented in a way that is likely to be understood by, its Identified target market; and
- b) identify the Member State where the Institution is registered.

R.2.2.5 No person, other than an Institution, may issue or cause to be issued, Advertisements in or from Malta, unless its contents have been approved in accordance with Rule R.2.2.41. Furthermore, the Institution approving such Advertisements shall ensure that any Advertisements disseminated or circulated principally in or from Malta comply with the requirements of these Rules and any other relevant legislation.

R.2.2.6 Any disclosure, warning or any other disclaimer which is required to be included in terms of the Regulations, these Rules, or any applicable laws, in any Advertisement or Information shall be shown prominently, clearly and intelligibly.

R.2.2.7 When issuing an Advertisement or communicating Information to a Consumer about an Equity Release Financial Product, an Institution should consider whether omission of any relevant fact will result in the Advertisement or Information being insufficient, unclear, unfair or misleading.

R.2.2.8 An Institution should:

- a) take account of the means of communication used to publish the Advertisement or communicate the Information to Consumers and of the limitations and/ or disadvantages associated with a particular means of communication. To this effect, any form of communication through Social Media is capable of being an Advertisement, depending on whether it includes an invitation or inducement to purchase an Equity Release Financial Product;
- b) ensure that disclaimers, risk warnings and other footnotes used in the Information should be of sufficient size and prominence to be clearly legible and not diminished, disguised or obscured in any way by the content, design or format of the Information;
- c) ensure that quoted performance figures are not selected so as to exaggerate the success or disguise the lack of success of an Equity Release Financial Product;
- d) ensure that only Information which is material to the Advertisement being published, is included. The Advertisement should indicate that further Information about the Equity Release Financial Product which is the subject of the Advertisement is available and from where.

R.2.2.9 An Institution shall include a regulatory disclosure statement in all the Advertisements it issues except for those Advertisements consisting of the information as provided in R.2.2.3. This regulatory disclosure statement shall indicate that the Institution is authorised to provide Equity Release Financial Products and enrolled in the ERS List, in terms of the Regulations.

The regulatory disclosure statement required by this Rule should also be made by the Institution when providing Information to Consumers.

R.2.2.10 An Institution shall ensure that Information shall not use the name of the Authority or any other competent authority in such a way that would indicate or suggest endorsement or approval by the Authority or any other competent authority of an Equity Release Financial Product or ancillary services of the Institution.

R.2.2.11 An Institution shall ensure that any Advertisement or Information it issues, which indicates the Authority as the regulator of the Institution issuing the Advertisement and which refer to matters not regulated by the Authority, makes it clear that those matters are not regulated by the Authority.

R.2.2.12 An Institution shall ensure that an Advertisement or Information which contains any initials or acronyms also states what the initials or acronyms stand for.

R.2.2.13 An Institution shall ensure that any Information contained in a marketing communication is consistent with any Information the Institution provides to a Consumer in the course of providing an Equity Release Financial Product.

R.2.2.14 In deciding whether and how, to issue an Advertisement, an Institution shall ensure that the medium selected for this purpose is commensurate with the nature of the Equity Release Financial Product and its likely Information requirements as well as the role and extent of the Information provided, the risks involved, the risk profile of the target audience in the sales process.

Where the medium selected by the Institution to disseminate the Advertisement is such that it does not allow the recipient to assimilate all the Information included therein (for example billboards), there should be no references to performance rates.

The medium, content and format of the Advertisement should be such that it is easily understood that it is only intended for Consumers. The Advertisement itself should also be understood by such Consumers, and therefore, where possible, simple and accurate terms should be used as opposed to complicated and technical jargon.

Also, any relevant warning statements included in an advertisement or should be of adequate size and included in a prominent position. In determining whether the information is included in a prominent position, one needs to consider its positioning within the respective medium selected i.e such information can be easily seen.

R.2.2.15 With respect to Advertisements and Information disseminated via the Internet, Institutions should also:

- a) include a statement indicating the identified target market which the website or email is intended for i.e. Consumers;
- b) include appropriate statements that the Consumer is leaving the Institution's website and accessing another in cases where the Institution's website is hyperlinked to other sites.

R.2.2.16 Where the Information compares Equity Release Financial Products or Institutions providing Equity Release Financial Products, Institutions shall ensure that the following conditions are satisfied:

- a) the comparison is meaningful and presented in a fair and balanced way;
- b) the sources of the Information used for the comparison shall be specified;
- c) the key facts and assumptions used to make the comparison shall be included.

Sub-section 1 *Disclosures which should be included as warning statements in Advertisements and Information where applicable*

R.2.2.17 An Institution shall ensure that warning statements:

- a) are prominently situated and of a font size that is at least equal to the predominant font size used throughout the document or Advertisement or Information; and
- b) appear together with the benefits of the advertised Equity Release Financial Product.

In the case of non-print media, it is sufficient that the warning statements are mentioned at the end of the Advertisement.

R.2.2.18 An Institution shall ensure that an Advertisement or Information relating to an Equity Release Financial Product that (to the extent that this is permitted by the Regulations) does not permit early repayment of the credit, or which incurs an early repayment charge if paid prior to the agreed termination, clearly states that this is the case.

R.2.2.19 An Institution shall ensure that an Advertisement or Information relating to an Equity Release Financial Product subject to front-end loading states, where applicable, that:

- a) deductions for charges and expenses are not made uniformly throughout the life of the Equity Release Financial Product, but are loaded onto the early period; and
- b) if the Consumer withdraws from the Equity Release Financial Product in the early period, the practice of front-end loading will impact on the amount of money which the Consumer receives.

R.2.2.20 An Institution issuing an Advertisement shall ensure that the Information provided therein is not in conflict, in any way, with the Information Document.

R.2.2.21 An Institution shall ensure that in Advertisements that promote an Equity Release Financial Product, the Information necessary to ensure that the Advertisements are fair, clear and not misleading in terms of the applicable charging structure is included. Such Advertisements should also contain sufficient Information taking into account the needs and vulnerabilities of the Consumers.

R.2.2.22 An Institution shall ensure that an Advertisement for a Product that uses promotional or introductory interest rates clearly states the expiry date of that interest rate and provides an indication of the rate that will apply thereafter.

R.2.2.23 An Institution shall ensure that any Advertisement concerning Equity Release Financial Products which indicates an interest rate or any figures relating to the cost of the credit to a Consumer shall include, in a clear, concise and prominent way, the following standard information:

- a) the identity of the Institution;
- b) that the product advertised is an Equity Release Financial Product and that the Credit Agreement will be secured by a hypothec on

- residential immovable property or on a right related to residential immovable property;
- c) the borrowing rate, indicating whether this is fixed or capped or a combination of both, for the whole duration of the Equity Release Transaction;
 - 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 any 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 interest;
 - j) a warning concerning the risk of losing the immovable property in the event of non-observance of the commitments linked to the credit agreement and, in any case, on termination of the credit agreement; and
 - k) a warning that compounding of interest could materially reduce the value of the estate of the Consumer.

The above-listed standard information, other than that listed in paragraphs (a) and (b), shall be specified by means of a representative example and shall adhere to that representative example throughout.

- R.2.2.24 Any Advertisement concerning Equity Release Financial Products which includes an interest rate or any figures relating to the cost of the credit to the Consumer, shall include, in a prominent way together with the APRC, a clear and concise statement in respect of any obligation to enter into a contract in respect of an ancillary service relating to the Equity Release Financial Product, 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.
- R.2.2.25 An Institution shall ensure that the Information referred to in Rules R.2.2.23 and R.2.2.24, shall be easily legible or clearly audible as appropriate, depending on the medium used for advertising and marketing.
- R.2.2.26 An Institution shall ensure that any assumptions, on which a statement or promise contained in an Advertisement is based, are clearly stated, reasonable and up-to-date.
- R.2.2.27 Where an Advertisement contains a statement or report attributed to an individual, the Advertisement should also disclose the name of that individual, his business address, qualifications and any material interest in the issuer of

the Advertisement or in the Equity Release Financial Product which is the subject of the Advertisement in question.

- R.2.2.28 Where the Information contained in an Advertisement is sourced from a third party, the Institution issuing the Advertisement should also confirm that this Information has been accurately reproduced and that no facts have been omitted which would render the reproduced Information inaccurate or misleading. In addition, the Institution should also identify the source(s) of the Information.
- R.2.2.29 If any Advertisement or Information refers to a particular tax treatment of an Equity Release Financial Product, an Institution shall ensure that the Advertisement or Information in question contains:
- a) details on the tax treatment of the Equity Release Financial Product, which is complete, fair, relevant, accurate and not misleading;
 - b) an indication as to whether the Institution assumes responsibility for the withholding of the taxes at source;
 - c) an indication that the Information relates to any appropriate current legislation as at the date of submission of that Information and that such tax arrangements may change in the future.
 - d)
- R.2.2.30 Where the Information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each Consumer and may be subject to change in the future.
- R.2.2.31 Where necessary, footnotes or other Information included to supplement or elaborate on the key Information in the main body of the Advertisement, shall be of sufficient size and prominence to be clearly legible. Where an asterisk is used to add explanation, the explanatory text may appear as a footnote provided that the linkage is absolutely clear.
- R.2.2.32 With respect to Advertisements broadcast on television and radio, apart from the guidance provided in the above-sections, Institutions should:
- a) state the regulatory disclosure statement as set out in R.2.2.9;
 - b) have clear and legible risk warnings indicated on a caption at the very bottom of the visual which should take up not less than 20% of the whole screen;
 - c) indicate the captions on a black background and using bold, white text which is non italicised. Captions at the bottom of the screen should not exceed 4 lines each and should only be updated at intervals of not less than 4 seconds each during broadcast of the visual;
 - d) include a voice over of all the relevant risk warnings relative to the investment;

- e) not include any reference to past or future performance rates if the broadcast is less than 30 seconds long.

- R.2.2.33 These Rules are media neutral and shall apply to Social Media as they would to any other medium.
- R.2.2.34 An Advertisement must be made in the “course of business”, that is it requires a commercial interest on the part of the communicator, for it to be captured within the regulatory regime.
- R.2.2.35 When deciding whether to promote or advertise through Social Media, Institutions should take into consideration the nature of their promotions together with the fact that communications through Social Media can reach a wide audience very rapidly. Due to the possibility of promotions through Social Media being circulated by users to unintended recipients, Institutions should take adequate measures to label and target their communications. The target audience, the nature of the Product and the likely Information needs of the average recipient should be considered.
- R.2.2.36 In order for Institutions to adhere with the requirement to be “clear, fair and not misleading”, when promoting the Equity Release Financial Product through Social Media, such Institution must ensure that Consumers have an appreciation of the relevant risks in addition to the potential benefits. Institutions should ensure that relevant text is sufficiently prominent.
- R.2.2.37 In view that adverts on some Social Media are subject to character-limitations, the use of images and infographics is recommended to ensure that all the relevant risk warnings and other required statements are included in the advert. It is also possible to include a link to more comprehensive Information, provided that the promotion is compliant with the applicable regulatory requirements on a stand-alone basis.
- R.2.2.38 Where a recipient shares or re-tweets an Institution’s communication, responsibility lies with the communicator (i.e. the recipient); therefore the Regulated Person would not be responsible. Notwithstanding, any breaches of rules in the original communication are still the responsibility of the Regulated Person and the Authority will take up the matter with the Regulated Person.
- R.2.2.39 If an Institution re-tweets a Consumer’s tweet, should the Consumer’s tweet endorse the benefits of a regulated Equity Release Financial Product, sharing of such comment by the Regulated Person will constitute a promotion. Re-tweeting by an Institution of a Consumer’s satisfaction on good customer service is not considered to be a promotion.
- R.2.2.40 The issuer of the Advertisement on Social Media should be clearly identifiable. Where a personal Social Media account is used by someone associated with a particular Institution, such as a senior person at the business, that individual

and the Institution should take necessary measures to clearly distinguish personal communications from those that are made in the course of that business.

Sub-section 2

R.2.2.41

Approval and Record-Keeping in relation to Advertisements

When issuing or approving Advertisements, Institutions shall:

- a) appoint the Compliance Officer to: confirm that Advertisements are compliant with this Rulebook; approve such Advertisements; and report to the MFSA any Advertisements issued or purporting to be issued by an Institution without the approval of the Compliance Officer;
- b) establish internal procedures relating to the approval of Advertisements to be issued by the Institution;
- c) identify the target market of Consumers for whom the Advertisement is intended and ensures that the method of circulating the Advertisement is appropriate for the Identified target market;
- d) keep records of all Advertisements issued and approved, including:
 - i. an approved certification in electronic format by the Compliance Officer that each Advertisement complies with the requirements of this Rulebook;
 - ii. the name of the individual who approved the Advertisements;
 - iii. the date of approval of the Advertisements;
 - iv. the publications in which the Advertisement was included; and
 - v. documentary evidence in support of any statement made in the Advertisement.

Section 3

R.2.3.1

Disclosures on Conflicts of Interest

When manufacturing and distributing Equity Release Financial Products, or granting or providing Advisory Services and, where appropriate, ancillary services to Consumers, or when executing an Equity Release Financial Product, the Institution must manage conflicts of interest fairly and reduce same to the lowest practical level, and, when they cannot be avoided, the Institution must disclose them to the Consumer and disclose the steps taken to mitigate them.

R.2.3.2

Where organisational or administrative arrangements made by Institutions to prevent conflicts of interest from adversely affecting the interest of its Consumers are not sufficient to ensure, with reasonable confidence, that risks of damage to Consumers' interests will be prevented, the Institution shall clearly disclose to the Consumer the general nature and sources of conflicts of interest and the steps taken to mitigate those risks before undertaking business on its behalf.

The disclosure shall:

- a) be made in a Durable Medium; and

- b) include sufficient detail, taking into account the nature of the Consumer, to enable that Consumer to take an informed decision with respect to the Products in the context of which the conflict of interest arises.

- R.2.3.3 Institutions shall ensure that disclosure to Consumers pursuant to Rule R.2.3.2, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the Institution to prevent or manage its conflicts of interests are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the Consumer will be prevented. An over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.
- R.2.3.4 When disclosure of specific conflicts of interests is required, the disclosure shall clearly state that the organisational and administrative arrangements established by the Institution to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence that the risk of damage to the interest of the Consumer will be prevented. The disclosure to Consumers must be made in a Durable Medium and it must also include a specific description of the conflict of interest that arises in the provision of the Equity Release Financial Products, taking into account the nature of the Consumer(s) to whom the disclosure is being made. That description must explain the general nature and sources of conflicts of interest, as well as the risks to the Consumer(s) that arise as a result of the conflict and the steps undertaken to mitigate these risks, in sufficient detail to enable that Consumer to make an informed decision with respect to the Equity Release Financial Product in the context of which the conflicts of interest arise.
- R.2.3.5 Institutions shall also be required to disclose at any time that the Consumer requests it, further details of the conflicts of interest policy in a Durable Medium or by means of a website.
- R.2.3.6 The circumstances which should be treated as giving rise to a conflict of interest should cover cases where there is a conflict between the interests of the Institution or certain persons connected to the Institution or the group of which the Institution forms part, or from the performance of its activities, and the duty the Institution owes to a Consumer.
- R.2.3.7 An Institution shall keep and regularly update a record of the situations and Equity Release Financial Products provided by the Institution in which a conflict of interest entailing a risk of damage to the interests of one or more Consumers has arisen or may arise. The Board of Directors of the Institution shall receive on a frequent basis, and at least annually, written reports on situations referred to in this Rule.

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