

**EQUITY RELEASE FINANCIAL PRODUCTS  
RULEBOOK**

CHAPTER 5 – VALUATION RULES

# CONTENTS

|  |   |
|--|---|
| CHAPTER 5.....                         | 2 |
| VALUATION RULES.....                   | 2 |
| SECTION 1.....                         | 2 |
| COMPETENT AND INDEPENDENT VALUERS..... | 2 |
| SECTION 2.....                         | 3 |
| VALUATION STANDARDS.....               | 3 |

## REVISIONS LOG

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## DEFINITIONS/GLOSSARY

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| <b><u>Advertisement</u></b>                                   | shall have the same meaning as that assigned to it in the Regulations  |
| <b><u>Advisory Services</u></b>                               | shall have the same meaning as that assigned to it in the Regulations  |
| <b><u>Annual Percentage Rate of Charge or APRC</u></b>        | shall have the same meaning as that assigned to it in the Regulations.   |
| <b><u>Applicant</u></b>                                       | shall mean a credit institution or financial institution that applies for registration in the ERS List   |
| <b><u>Authority</u></b>                                       | shall mean the Malta Financial Services Authority  |
| <b><u>Complaints Management Unit</u></b>                      | shall mean the unit established by the Institution to handle the complaints management process or function in terms of Chapter 4 of this Rulebook  |
| <b><u>Complaints Register</u></b>                             | shall mean the register held by the Institution to register complaints of Consumers  |
| <b><u>Complainant</u></b>                                     | shall mean a Consumer who has filed a complaint to the MFSA in relation to the rights and obligations pursuant to the Regulations  |
| <b><u>Consumer</u></b>  | 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   |
| <b><u>Credit Agreement or Agreement</u></b>                   | 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  |
| <b><u>Credit Institution</u></b>                              | 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  |
| <b><u>Data Protection Legislation</u></b>                     | shall have the same meaning as that assigned to it in the Regulations  |
| <b><u>Distance Contract</u></b>                               | 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 |
| <b><u>Durable Medium</u></b>                                  | shall mean any instrument which:<br>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<br>2. allows the unchanged reproduction of the information stored   |
| <b><u>Equity Release Financial Products or Product(s)</u></b> | shall have the same meaning as that assigned to it in the Regulations  |
| <b><u>Equity Release Transaction</u></b>                      | shall mean a transaction involving equity release financial products   |
| <b><u>ERS List</u></b>  | 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   |
| <b><u>ERS Register</u></b>                                    | shall mean the register established in terms of Rule R.1.2.2   |
| <b><u>European credit institution</u></b>                     | 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)   |
| <b><u>Financial Institution</u></b>                           | 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;   |

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|   | 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   |
| <b><u>Information</u></b>   | 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   |
| <b><u>Information Document</u></b>                                    | shall have the same meaning as that assigned to it in the Regulations   |
| <b><u>Institution</u></b>   | shall mean a credit institution or financial institution to which this Rulebook applies   |
| <b><u>Mental Capacity</u></b>   | 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 |
| <b><u>Office of the Arbiter for Financial Services or Arbiter</u></b> | shall mean the office established in terms of article 10 of the Arbiter for Financial Services Act (Cap. 555 of the laws of Malta)  |
| <b><u>Personalised Information</u></b>                                | 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  |
| <b><u>Regulations</u></b>   | shall mean the Equity Release Financial Products Regulations (Legal Notice 193 of 2019)   |
| <b><u>Rulebook</u></b>  | shall mean this Equity Release Financial Products Rulebook  |
| <b><u>Social Media</u></b>  | 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)                      |
| <b><u>Staff</u></b>   | Shall have the same meaning as that assigned to it in the Regulations   |

## Chapter 5 Valuation Rules

### Section 1 *Competent and Independent Valuers*

- R.5.1.1 A property valuation, for the purpose of securing the Equity Release Financial Product at the commencement of the Equity Release Transaction, shall be undertaken by professionally competent and independent valuers.
- R.5.1.2 For the purposes of Rule R.5.1.1, a professionally competent valuer shall be able to demonstrate that:
- he/she has obtained appropriate academic or professional qualifications, at a recognized establishment of higher education, has at least two years relevant post-graduate experience, and has maintained and enhanced his/her professional knowledge through an appropriate programme of continuing education;
  - he/she has sufficient local knowledge and experience in valuing fixed assets in the location and category of the property under valuation;
  - he/she has appropriate professional indemnity insurance cover, as established in national legislation, in relation to the responsibilities undertaken by the assignment.
- R.5.1.3 For the purposes of Rule R.5.1.1, a valuer is independent when he/she has no direct or indirect potential conflicts of interest, actual or possible, which are foreseeable at the time of the valuation. A potential conflict of interest arises when there exist, or can exist, a significant financial interest in the outcome of the valuation. Indirect potential conflicts of interest arise through partners or co-directors, or through close family ties. Any past involvement with the subject property or any of the parties to the Equity Release Transaction, over the previous two years, shall be disclosed and, unless the Consumer has any objection, the Institution shall objectively determine whether that involvement would constitute a conflict of interest or otherwise, with this assessment being documented and retained by the Institution.
- R.5.1.4 A valuer shall not undertake the preparation of a property valuation unless he/she has the appropriate level of competence and experience. With the agreement of the Institution, he/she may seek specialist assistance with the task.
- R.5.1.5 The valuer shall act in an impartial and objective manner when undertaking the valuation.
- R.5.1.6 The MFSA may, exceptionally, permit the valuation to be carried out by an internal valuer of the Institution.
- R.5.1.7 Where the consent of the MFSA is obtained for an internal valuation to be carried out in accordance with the provisions of Rule R.5.1.6, the Institution shall recommend to the Consumer in writing that the Consumer arranges to have an independent valuation of the property carried out in addition to the internal valuation. This assures greater protection for the Consumer as the independent valuer can confirm the valuation of the Institution's valuer.

**Section 2      Valuation Standards**

- R.5.2.1      A property valuation shall be undertaken in accordance with the standards and guidelines of established Standards such as those published by The European Group of Valuers' Associations (TEGOVA).
- R.5.2.2      The property valuation shall be undertaken on the basis of the market value, which, on the basis of the definition of the International Valuations Standards Council, means the: "estimated amount for which a property should exchange on the value of the date of the valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."
- R.5.2.3      For the purposes of Rule R.5.2.2, the market value shall exclude the cost of sale or purchase and without offset for any associate taxes.
- R.5.2.4      The estimated amount shall be the best price reasonably obtainable by a seller and the most advantageous price reasonably obtainable by a buyer. It shall take into account the realities of the current market. In addition, however, since Equity Release Financial Products are a form of mortgage, consideration shall be given to future marketability, and to the identification and elimination of any unsustainable speculative components, that is, to a "smoothing" of market trends.
- R.5.2.5      The valuer shall take due regard of the impact of short term demand resulting from market inefficiencies, such as the situation where shortage of supply is then followed by over-supply. The valuer may need to study trends such as demographics, patterns of wealth, income ratios, employment and socio-cultural spending habits, transport infrastructure, currency fluctuations and economic growth estimates.
- R.5.2.6      The estimate shall normally be based on the existing use of the property and not on a potentially higher alternative use value, unless there are specific circumstances, such as imminent redevelopment in the area, which render such an alternative use basis a more realistic approach.
- R.5.2.7      The valuation approach that is likely to be used in the context of Equity Release Financial Products is the comparative approach, although where market information is limited, a depreciated replacement cost approach may be used.
- R.5.2.8      In undertaking market research, consideration shall be given to realised transacted prices rather than published market sale prices. Consideration shall also be given to similarity of location, typology, orientation, and design features.
- R.5.2.9      The valuer shall specifically identify the factors underpinning his estimate in the valuation report required in terms of Rule R.5.3.2. Any significant difference

between the market value and the mortgage lending value shall be specifically noted and explained.

### **Section 3      Valuation Report**

- R.5.3.1      The valuer shall prepare a valuation report in accordance with Rule R.5.3.2.
- R.5.3.2      The valuation report referred to in Rule R.5.3.1 shall contain, as a minimum:
- a) the identification of the property asset, and its location;
  - b) the instructions received by the valuer, the name of the instructing party, and the purpose of the valuation;
  - c) the date and extent of inspections carried out prior to estimation;
  - d) the tenure and classification of the property;
  - e) a description of the property, including age, approximate area, layout, structural condition, photograph of the property, quality and condition of finishes and fixtures, age and condition of building services, and the surrounding context;
  - f) a recent 1:1000 site plan identifying the property;
  - g) existing use and relevant planning permissions;
  - h) any material contravention of statutory requirements;
  - i) details of any registered mortgages and privileges, other charges, details of emphyteutical concessions, easements and other burdens;
  - j) the sources of information, including the number of comparable properties for which information was available to the valuer;
  - k) the identity of the valuer, qualifications and experience;
  - l) a statement on the independence of the valuer;
  - m) the basis of the valuation, and any qualifications to the open market value where applied;
  - n) any assumptions and other matters relevant to the valuation, including, but not limited to, matters referred to in Section 2 of this Chapter, particularly in Rules R.5.2.6, R.5.2.7 and R.5.2.9;
  - o) the current capital value of the property, clearly excluding taxes and other costs;
  - p) the valuation date;
  - q) the signature of the valuer and the date;
  - r) any confidentiality, or publication limitation, clauses that are applicable; and
  - s) any limits to legal responsibility of the value to third parties, as applicable.
- R.5.3.3      The valuation report referred to in Rule R.5.3.1 drawn up in accordance with Rule R.5.3.2 shall be structured in a way which provides a professional opinion of the value of the property in question without being misleading, should be unambiguous and should highlight those matters and assumptions which may in any way affect the valuation.



R.5.3.4 A copy of valuation report referred to in Rule R.5.3.1 shall be provided to the consumer.

**Section 4 Record-Keeping**

R.5.4.1 Institutions shall retain records of the following:

- a) evidence of the professional competence and independence of the valuer in terms of Section 1 of this Chapter;
- b) any written recommendations to Consumers to obtain an independent valuation where the MFSA has consented to an internal valuation, as required by Rule R.1.5.7;
- c) the valuation report compiled in terms of Section 3 of this Chapter; and
- d) any other documentation necessary to demonstrate compliance with this Chapter.

R.5.4.2 The records required in terms of Rule R.5.4.1 must be retained for a minimum of five years from the date on which the Equity Release Transaction has been exhausted, i.e. from when the credit was repaid in accordance with the Regulations (either by the Consumer himself, or by his heirs or otherwise as a results of proceeds derived from the sale of the immovable property which was being used as collateral).

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