

EQUITY RELEASE FINANCIAL PRODUCTS RULEBOOK

THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

CONTENTS

CHAPTER 1	2
SECTION 1	2
ERS LIST	2
SUB-SECTION 1	4
SECTION 2	7
ERS REGISTER	7
SECTION 3	10
REGISTRATION CONSIDERATIONS	10
R.1.3.3.....	12
R.1.3.4.....	12
SECTION 4	12
REGISTRATION PROCESS.....	12
R.1.4.1.....	12
R.1.4.2.....	12
R.1.4.3.....	12
R.1.4.4.....	12
R.1.4.5.....	12
SECTION 5	13
TRANSITIONAL PROVISIONS	13
R.1.5.1.....	13
R.1.5.2.....	13
R.1.5.3.....	13
SECTION 6	13
PROVISION OF EQUITY RELEASE FINANCIAL PRODUCTS BY EUROPEAN CREDIT INSTITUTIONS.....	13
R.1.6.1.....	13
R.1.6.2.....	14
R.1.6.3.....	14
R.1.6.4.....	14
R.1.6.5.....	14
SECTION 7	14
FEES.....	14
CHAPTER 2.....	16
DISCLOSURES.....	16
SECTION 1	16
GENERAL	16
SUB-SECTION 1	21
PRE-CONTRACTUAL DISCLOSURES.....	21
SUB-SECTION 2.....	24
DISCLOSURES WHERE AN EQUITY RELEASE FINANCIAL PRODUCT IS PROVIDED THROUGH THE INTERNET	24

SUB-SECTION 3	27
DISCLOSURES MADE IN (OR IN RELATION TO) THE CREDIT AGREEMENT	27
SUB-SECTION 4	28
DISCLOSURES MADE TO THE AUTHORITY	28
SUB-SECTION 5	28
OTHER DISCLOSURES.....	28
SUB-SECTION 6	32
DISCLOSURE OF APPLICABLE COSTS AND CHARGES	32
SECTION 2	33
MARKETING RULES AND ADVERTISEMENTS	33
SUB-SECTION 1	38
DISCLOSURES WHICH SHOULD BE INCLUDED AS WARNING STATEMENTS IN ADVERTISEMENTS AND INFORMATION	
SUB-SECTION 2	43
APPROVAL AND RECORD-KEEPING IN RELATION TO ADVERTISEMENTS	43
SECTION 3	44
DISCLOSURES ON CONFLICTS OF INTEREST	44
CHAPTER 3.....	47
GENERAL PRINCIPLES	47
R.3.1.10	51
R.3.1.11	51
R.3.1.11	52
R.3.1.12	52
R.3.1.13	53
R.3.1.14	53
R.3.1.15	53
R.3.1.16	54
R.3.1.17	54
R.3.1.18	54
R.3.1.19	54
R.3.1.20	54
R.3.1.21	54
R.3.1.22	55
SECTION 2	55
ASSESSMENT OF DEMANDS AND NEEDS	55
SUB-SECTION 1	57
ASSESSMENT OF THE CONSUMER'S MENTAL CAPACITY.....	57
SUB-SECTION 2.....	60
ASSESSMENT OF FINANCIAL SITUATION	60
SECTION 3	61
NON-ADVISORY SERVICES.....	61
R.3.3.3.....	62
R.3.3.4.....	64
GUIDANCE NOTE:.....	64

R.3.3.5.....	64
R.3.3.6.....	64
R.3.3.7.....	64
SECTION 4	64
ADVISORY SERVICES.....	64
R.3.4.1.....	65
R.3.4.2.....	65
R.3.4.3.....	65
R.3.4.4.....	65
R.3.4.5.....	65
R.3.4.6.....	66
R.3.4.7.....	66
R.3.4.8.....	66
R.3.4.9.....	66
R.3.4.10	67
R.3.4.11	67
R.3.4.12	67
SECTION 5	67
EXECUTION-ONLY SALES	67
R.3.5.1.....	68
R.3.5.2.....	68
R.3.5.3.....	69
R.3.5.4.....	71
R.3.5.5.....	71
R.3.5.6.....	71
R.3.5.7.....	72
R.3.5.8.....	72
SECTION 6	72
REMUNERATION AND PERFORMANCE MANAGEMENT	72
R.3.6.1.....	72
R.3.6.2.....	72
R.3.6.3.....	73
R.3.6.4.....	73
R.3.6.5.....	74
R.3.6.6.....	74
R.3.6.7.....	74
R.3.6.8.....	74
R.3.6.9.....	74
CHAPTER 4.....	75
COMPLAINTS HANDLING	75
SECTION 1	75
COMPLAINTS MANAGEMENT POLICY.....	75
SECTION 2	76
COMPLAINTS MANAGEMENT FUNCTION	76

SECTION 3	76
REGISTRATION OF COMPLAINTS	76
SECTION 4	77
INTERNAL FOLLOW-UP OF COMPLAINTS.....	77
SECTION 5	78
PROVISION OF INFORMATION.....	78
SECTION 6	79
PROCEDURE FOR RESPONDING TO COMPLAINTS.....	79
SECTION 7	80
REPORTING TO THE MFSA.....	80
SECTION 8	80
UNRELATED COMPLAINTS.....	80
CHAPTER 5.....	82
VALUATION RULES	82
SECTION 1	82
COMPETENT AND INDEPENDENT VALUERS	82
SECTION 2	83
VALUATION STANDARDS	83
SECTION 3	84
VALUATION REPORT	84
SECTION 4	86
RECORD-KEEPING	86

REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	3 rd October 2019	Issued Chapter 1
1.01	13 th January 2020	Issued Chapter 2 to 5

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.

Chapter 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

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 authorisationsbanking@mfsa.mt and aubankingfis@mfsa.com.mt, as applicable. 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 Application and Supervisory 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.

- R.1.7.2 Any person enrolled in the ERS register shall pay an annual supervisory fee of € 9,500. Such fee shall be paid on the day when the registration is first issued and thereafter on the 1st of January of each year.

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, and where applicable, 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;**
- **Prior to acquiring an Equity Release Financial Product you should first consider other viable 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**

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 both parties have the same degree of knowledge and understanding of the Equity Release Financial Product and should consider the needs of either party for more in-depth explanations or guidance.

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.
- 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. Where such draft conditions are included in a draft sanction letter, this is to be provided in addition to Information Document required in terms of the First Schedule to the Regulations.
- 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.

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 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;
- 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.

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 (in the case of termination due to the Consumer moving into long-term care) or the Consumer's heirs (in the case of termination due to the Consumer's death):
- a) clearly explains to the Consumer or the Consumer's heirs, as applicable, the purpose and intended outcome of the proposed visit; and
 - b) gives the Consumer or the Consumer's heirs, as applicable, 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 Consumer or the Consumer's heir, as applicable, 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 that person's wishes. It is important that the

Consumer or the Consumer's heir, as applicable, is given reasonable time to prepare for a visit and should not be forced or pressured 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.

- 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 a 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.

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 contrasting 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 Approval and Record-Keeping in relation to Advertisements

- R.2.2.41 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 Disclosures on Conflicts of Interest

R.2.3.1 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.

Chapter 3 Sales Processes and Selling Practices

When selling Equity Release Financial Products to Consumers, Institutions have an obligation to act honestly, fairly and in accordance with the best interest of such Consumers. They must also behave with utmost good faith, integrity, due skill, care and diligence vis-à-vis Consumers.

Accordingly, Institutions are required to do everything which is possible to satisfy the demands and needs of Consumers, including by assessing the circumstances and limitations of the Consumers in question in accordance with this Chapter, and shall place the interests of the latter before all other considerations.

To this end, this Chapter regulates the sales processes and selling practices that Institutions shall adopt when engaging in Equity Release Transactions with Consumers. More specifically, this Chapter addresses the considerations that Institutions must make prior to selling Equity Release Financial Products to Consumers and details the requirements incumbent upon such Institutions depending on whether Advisory Services are being provided or otherwise. This Chapter further regulates the remuneration policies and procedures that Institutions must adopt in this regard.

Institutions must have regard to the requirements set out in this Chapter in the event of a variation in the terms of the Equity Release Transaction, including, but not limited to, changes in the parties to the Credit Agreement, changes in type of interest or in the methodology used for the computation of such rate.

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

Section 1 General Principles

R.3.1.1 An Institution shall be deemed to provide Advisory Services for the purposes of this Rulebook if it provides a personal recommendation to a Consumer, either at the request of the Consumer in question or on its own initiative, with respect to one or more transactions related to Equity Release Financial Products.

R.3.1.2 For the purposes of Rule R.3.1.1, there are three main elements to a personal recommendation:

6. there shall be a recommendation;

7. the recommendation shall be presented as suitable or purported to be suitable for the person to whom it is made or based on the person's circumstances; and
8. the recommendation shall relate to taking certain steps in respect of one or more transactions related to Equity Release Financial Products.

R.3.1.3

Whether or not a personal recommendation is given depends in part on whether the Consumer is led to think that one is being given, or otherwise whether the Consumer is likely to perceive that the Institution is assisting him/her to make his/her own choice of Equity Release Financial Product. Therefore, it is important for the Institution to clearly indicate whether it is providing an Advisory or Non-Advisory Services to the Consumer.

If an Equity Release Financial Product was presented to a Consumer in some other way that would influence the Consumer to take a course of action in relation to a specific Equity Release Financial Product, this is likely to be an implicit recommendation.

A clear, prominent and understandable disclaimer stating that no Advisory Services are being provided or that no recommendation is being made is unlikely to be sufficient to avoid having presented a recommendation for the purposes of determining whether Advisory Services have actually been given. Accordingly, the fact that an Institution states that its Equity Release Financial Product would suit a particular Consumer's needs and includes a disclaimer saying that this did not constitute Advisory Services, would not necessarily change the basic nature of the communication and it may still constitute a personal recommendation and hence the provision of Advisory Services.

The difference between providing information and Advisory Services is the element of opinion or judgement on the part of the Institution. In making a personal recommendation, and hence providing Advisory Services, the Institution would need to make a judgement or assessment that would result in one or more Equity Release Financial Products being identified as suitable for a Consumer, whether as a result of information that Consumer provides or otherwise.

R.3.1.4

The Institution shall explicitly inform the Consumer, in the context of a transaction relating to an Equity Release Financial Product, the nature of

service being provided i.e. whether an Advisory or Non-Advisory Service is being or can be provided to the Consumer.

- R.3.1.5 Institutions shall ensure and demonstrate to the Authority that Staff providing Advisory Services or simply information about Equity Release Financial Products to Consumers possess the necessary skills, knowledge and competence to fulfil their obligations under this Rulebook in accordance with the requirements set out in Chapter 1 of this Rulebook. Staff capabilities and training needs in this regard shall be commensurate to the respective roles and responsibilities, also depending on whether such Staff is involved in the provision of Advisory Services.
- R.3.1.6 Institutions are prohibited from using the terms 'independent advice' and 'independent advisor' or similar terms when Advisory Services are being provided by them to Consumers.
- R.3.1.7 Institutions shall give a strong recommendation to Consumers to seek independent professional advice in relation to the Equity Release Financial Product from a lawyer or accountant of the Consumers' choice, which lawyer or accountant is duly authorised to practice in Malta. Such advice should cover, *inter alia*, tax and succession implications as a result of the Consumer acquiring Equity Release Financial Products.
- R.3.1.8 An Institution must act honestly, fairly and professionally in accordance with the best interests of the Consumer. Examples of behaviour by or on behalf of an Institution which is likely to contravene this principle include:
1. targeting Consumers with Equity Release Financial Products which are unsuitable for them, by virtue of their indebtedness, age, health, disability or any other reason; and
 2. subjecting Consumers to high-pressure selling, aggressive or oppressive behaviour, or unfair coercion.
- R.3.1.9 When providing Equity Release Financial Products, an Institution shall:
1. at all times carry out their activities with utmost good faith, integrity, due skill, care and diligence;
 2. do everything which is reasonably possible to satisfy the needs and requirements of its Consumers and place the interests of

those Consumers before all other considerations.

R.3.1.10 An Institution must ensure that it abides by the following requirements:

1. review their business model and strategy on a regular basis;
2. place Consumers at the centre of their operations;
3. identify conduct risks and set up processes to ensure that such risks are measured, mitigated and monitored;
4. conduct risks are known to key personnel within the Institution, including the board of directors and Staff;
5. there are clear level of responsibilities, clear reporting lines, clear segregation of duties, clear establishment of target markets, appropriate distribution channels, and clear communication with Consumers;
6. they monitor the performance management, employee development and reward programmes incentivising Staff to ensure that the way an Institution remunerates or assesses performance of Staff does not conflict with its duty to act in the best interests of Consumers.

R.3.1.11 In order to comply with the requirements of this Rulebook, an Institution shall, *inter alia*:

1. seek from Consumers information relevant to the Equity Release Financial Product(s) requested in accordance with this Chapter;
2. in the completion of any document, make it clear that all the answers or statements regarding the Consumer's personal details and circumstances are the Consumer's own responsibility. The Consumer should always be required to assume responsibility for the completed document and be advised that, incomplete and/or inaccurate information may prejudice the Consumer's rights;
3. not recklessly, negligently or deliberately mislead a Consumer to the real or perceived advantages or disadvantages of any Equity Release Financial Product;
4. seek from Consumers information relevant to the Equity Release Financial Product(s) requested in accordance with this Chapter

- R.3.1.11
5. seek from Consumers information relevant to the Equity Release Financial Product(s) requested in accordance with this Chapter;
 6. in the completion of any document, make it clear that all the answers or statements regarding the Consumer's personal details and circumstances are the Consumer's own responsibility. The Consumer should always be required to assume responsibility for the completed document and be advised that, incomplete and/or inaccurate information may prejudice the Consumer's rights;
 7. not recklessly, negligently or deliberately mislead a Consumer to the real or perceived advantages or disadvantages of any Equity Release Financial Product;
 8. ensure that all instructions from or on behalf of a Consumer are processed properly and promptly;
 9. have proper regard for the wishes of a Consumer who seeks to terminate any agreement with it to carry out business;
 10. seek to avoid conflicts of interest;
 11. not exert undue pressure or undue influence on a Consumer;
 12. treat all information disclosed by a Consumer with complete confidentiality;
 13. where Advisory Services or Non-Advisory Services are being provided, not request a Consumer to sign declarations to the effect that s/he has understood and accepts certain features of the Equity Release Financial Product or that s/he is relying on his/her own skill, judgement and expertise in order to purchase Equity Release Financial Products when it is the obligation of the Institution to assess the suitability and /or appropriateness, as may be applicable, of such Equity Release Financial Products vis-à-vis the Consumer. In this respect, the Institution should avoid stating, or giving the impression, that it is the Consumer who decides on the suitability and/or appropriateness, as may be applicable, of the Equity Release Financial Product.

- R.3.1.12
- Any information acquired by an Institution from a Consumer shall not be used or disclosed except in the normal course of negotiating, maintaining or amending an Equity Release Transaction for that Consumer or in accordance with the provisions of specific legislation, or otherwise unless the consent of the Consumer has been obtained.

R.3.1.13 In light of the nature of Equity Release Financial Products, an Institution shall not deal with a person who is acting for a Consumer under a power of attorney but shall only deal with the Consumer directly.

R.3.1.14 An Institution shall not:

1. make inaccurate or unfair criticism of any other Institution or any Equity Release Financial Product offered by such other Institutions;
2. make comparisons with other types of Equity Release Financial Products unless the differing characteristics of each Equity Release Financial Product are made clear; and
3. persuade or attempt to persuade a Consumer to terminate the credit agreement entered into in respect of Equity Release Financial Product which such Consumer may have already purchased, if such termination is not in the best interest of the Consumer.

R.3.1.15 An Institution shall explain to the Consumer words and expressions of a technical nature which are used in a document in either the Maltese or the English language depending on which language the Consumer understands better.

In particular, but not limitedly so, an Institution shall provide a clear explanation to Consumers on the effects of the compound nature of interest charges as well as variable interest charges, where applicable, and make the necessary disclosures in accordance with this Rulebook, including providing the necessary warnings as required by Chapter 2 of this Rulebook.

For this purpose, the MFSA is of the view that the levying of compound interest charges on Equity Release Financial Products goes against the aims and objectives of the Regulations. In this regard, and whilst acknowledging that the use of compounding of interest is not explicitly excluded by the Regulations, the MFSA strongly recommends that Institutions do not apply compound interest rate charges to Equity Release Financial Products.

- R.3.1.16 An Institution shall ensure that Equity Release Financial Products are not promoted by means of cold calling and that it does not make unsolicited or unarranged calls to Consumers in order to sell Equity Release Financial Products.
- R.3.1.17 An Institution shall ensure that it retains full and complete records of, *inter alia*, policies, procedures, communications with Consumers, and other internal controls adopted by the Institution, for the purpose of demonstrating compliance to the Authority with its obligations in terms of this Chapter.
- R.3.1.18 The Institution shall, unless the Consumer has not already done so, strongly suggest that, prior to entering into the Equity Release Transaction, the Consumer:
1. reads all documentation and disclosure thoroughly and carefully;
 2. seeks assistance from the appropriate Social Services Department in relation to the Consumer's entitlement to any applicable means-tested benefits and how this could be impacted by the Equity Release Transaction; and
 3. obtains professional and/or legal advice in relation to, *inter alia*, the tax and succession implications arising from the Equity Release Transaction.
- R.3.1.19 The Institution shall be entitled to rely on the information provided by the Consumer unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.
- R.3.1.20 The Institution must explain to the Consumer that the assessments carried out in accordance with this Chapter are based on the Consumer's current circumstances, which may change in the future.
- R.3.1.21 Any disclaimers (or other types of statements) aimed at limiting the Institution's responsibility for the respective assessments in the provision of Non-Advisory Services shall not in any way impact the characterisation of the service provided in practice to the Consumer nor the assessment of the Institution's compliance to the corresponding requirements.

R.3.1.22 Institutions may use questionnaires to collect information during discussions with Consumers. Institutions shall ensure that the questions they ask Consumers are likely to be understood correctly and that any other method used to collect information is designed to get the information required for an appropriateness assessment. When designing such questionnaires, Institutions should be aware and consider the most common reasons why Consumers could fail to answer questions correctly. In particular:

1. attention should be given to the clarity, exhaustiveness and comprehensibility of the questionnaire, avoiding misleading, confusing, imprecise and excessively technical language (for this purpose the use of vague language which could lead to different interpretations and the use of double negatives should be avoided, for example);
2. the layout (including font and line spacing) should be carefully elaborated and should avoid orienting Consumers' choices;
3. collecting information on a series of items through a single question should be avoided;
4. consideration should be given to the order in which they ask questions in order to collect information in an effective manner; and
5. the possibility not to reply should generally not be available in questionnaires.

Section 2 Assessment of demands and needs

Applicability: The Rules contained in this Section apply at all times irrespective of the type of service being provided to the Consumer in relation to an Equity Release Financial Product.

R.3.2.1 Prior to the conclusion of a contract for the provision of Equity Release Financial Products, and irrespective of whether Advisory Services or Non-Advisory Services are being provided, the Institution shall specify, on the basis of information obtained from the Consumer, the demands and needs of that Consumer and shall provide the Consumer with objective information about Equity Release Financial Products in accordance with the disclosure requirements specified in Chapter 2.

R.3.2.2 Any Equity Release Financial Product proposed by the Institution to the

Consumer shall be consistent with the Consumer's demands and needs.

R.3.2.3 Where Advisory Services are provided prior to the conclusion of any specific contract, the Institution shall provide the Consumer with a personal recommendation explaining why a particular Equity Release Financial Product would best meet the Consumer's demands and needs.

R.3.2.4 As part of this assessment, Institutions shall ensure that the Consumer has considered all alternative courses of action (including, but not limited to, selling his/her current residence and moving to a smaller residence, or renting out part of his/her current residence) that could deliver the Consumer's objective without recourse to Equity Release Financial Products.

R.3.2.5 An Institution must base its determination of whether an Equity Release Transaction is appropriate to a Consumer's demands and needs on the facts disclosed by the Consumer and other relevant facts about the Consumer of which the Institution is or should be reasonably aware of.

R.3.2.6 The Institution should also have regard to information of which it is aware at the time the assessment is carried out that may indicate that the Consumer is a vulnerable Consumer because:

4. the Consumer has physical limitations and may require assistance in the decision-making process (for example because s/he is hearing impaired or visually impaired);
5. the Consumer has Mental Capacity limitations (see Sub-Section 1 of this Chapter); and/or
6. the Consumer is in, has recently experienced, or is likely to experience, financial difficulties (see Sub-Section 2 of this Chapter).

For the purposes of this Rule, the Institution would need to proactively recognise the potential vulnerabilities associated with older Consumers and act with appropriate level of care in accordance with the requirements of this Chapter. Further, the Institution may also have regard, where appropriate, to information obtained in the course of previous dealings with the Consumer. However, the Institution should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it.

R.3.2.7 In relation to vulnerable Consumers, Institutions should adopt more cautious practices in their operations. The following is an indicative list of what may constitute good practices to be adopted by the Institution in this regard, whilst also taking into consideration sub-sections 1 and 2 for more targeted guidance on Mental Capacity limitations and financial difficulties respectively:

1. offering of clear and straightforward Equity Release Financial Products which do not include any hidden surprises which might only surface in adverse situations;
2. employing marketing strategies which in no way exploit vulnerabilities;
3. having a number of available options for communication in relation to the method of communication and delivery of service. Such means should be designed in an inclusive manner to meet the needs of different Consumers with varying circumstances;
4. providing Consumers with tailored treatment in the event of a change in circumstances which would require a flexible approach;
5. having procedures in place for Staff to identify the consumer vulnerabilities and consider these vulnerabilities when determining whether the Equity Release Financial Product is suitable for the Consumer;
6. Having procedures in place to escalate vulnerability issues to someone who has the authority and discretion to adapt terms and conditions to a particular situation;
7. ensuring that vulnerable Consumers are given sufficient time in order to be able to assess and reflect upon the Equity Release Transaction that they are being sold, including any related terms and conditions.

Sub-Section 1 Assessment of the Consumer's Mental Capacity

R.3.2.8 Amongst the most common potential causes of Mental Capacity limitations are the following examples: a mental health condition, dementia, a learning disability, a developmental disorder, a neurological disability or brain injury and alcohol or drug (including prescribed drugs) induced intoxication.

R.3.2.9

An Institution is likely to have reasonable grounds to suspect a Consumer may have some form of Mental Capacity limitation if the firm observes a specific indication (behavioural or otherwise) that could be indicative of some form of limitation of the Consumer's Mental Capacity, and, shall refer the Consumer to the appropriate health specialist for proper certification where appropriate. Examples (amongst others) of indications might include:

1. where an Institution has an existing relationship with a Consumer, the Consumer making a decision that appears to the Institution to be unexpected or out of character;
2. a person who is likely to have an informed view of the matter, such as a relative, close friend, carer or family doctor raising a concern with the Institution as to the capacity of the Consumer to make a decision about acquiring Equity Release Financial Products;
3. the Institution understands or has reason to believe the Consumer has been diagnosed as having an impairment which led to the Consumer not having had Mental Capacity for similar decisions in the past;
4. the Institution understands or has reason to believe the Consumer does not understand what the Consumer is applying for;
5. the Institution understands or has reason to believe the Consumer is unable to understand the information and explanations provided by the Institution, in particular concerning the key risks and implications of entering into the agreement for the acquisition of Equity Release Financial Products;
6. the Institution understands or has reason to believe the Consumer is unable to retain information and explanations provided by the Institution to enable the Consumer to make the decision to enter into an Equity Release Transaction;
7. the Institution understands or has reason to believe the Consumer is unable to weigh up the information and explanations provided by the Institution to enable the Consumer to make the decision to enter into an Equity Release Transaction;
8. the Consumer is unable to communicate a decision to enter into an Equity Release Transaction by any reasonable means;
9. the Consumer being confused about the Personalised

Information that the Institution requires, such as date of birth or address.

- R.3.2.10 An Institution should document practices and procedures to set out the steps that it takes when it receives requests for Equity Release Financial Products from such Consumers. For this purpose, such practices and procedures should be designed to assist Consumers that Institutions understand have, or reasonably suspect of having, Mental Capacity limitations to overcome, the effect of the limitations and place them, to the extent possible, on an equivalent basis to Consumers who do not have such limitations, to increase the likelihood of Consumers being able to make informed decisions in relation to the acquisition of Equity Release Financial Products.
- R.3.2.11 Where an Institution understands, or reasonably suspects, that a Consumer has or may have a Mental Capacity limitation the Institution should use its business practices and procedures to:
1. assist the Consumer, where possible, to make an informed decision to enter into an Equity Release Transaction;
 2. ensure that such decision is informed and responsible in the circumstances and mitigates the potential risks to the Consumer; and
 3. ensure that the Consumer is not provided with Equity Release Financial Products which the Institution knows, or reasonably believes to be unsuitable for the Consumer or otherwise does not meet the Consumer's demands and needs.
- R.3.2.12 Institutions are not precluded from requesting the Consumer to obtain an assessment from a medical professional on that Consumer's Mental Capacity. Notwithstanding this, the Institution remains exclusively responsible for demonstrating that it has taken all reasonable measures to identify and establish the Consumer's Mental Capacity.
- R.3.2.13 Where, following the conclusion of the Equity Release Transaction, the Institution becomes aware or is informed that the Consumer has become incapacitated, it may apply to the Court of voluntary jurisdiction for the appointment of a curator, in accordance with the provisions of the Code of Organization and Civil Procedure (Cap. 12 of the laws of Malta).

Sub-Section 2 Assessment of financial situation

- R.3.2.14 An Institution must establish, implement and maintain an adequate policy for identifying and dealing with Consumers showing signs of actual or possible financial difficulties.
- R.3.2.15 The following matters, among others, of which an Institution is aware or ought reasonably to be aware, may indicate that a Consumer is in financial difficulties (where applicable):
1. consecutively failing to meet minimum repayments in relation to a credit card;
 2. adverse accurate entries on a credit file, which are not in dispute;
 3. outstanding court judgments for non-payment of debt;
 4. inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the Consumer having to borrow further to repay existing debts, or the Consumer only being able to meet repayments of debts by the disposal of assets or security; and
 5. consecutively failing to meet repayments when due on other borrowing arrangements.
- R.3.2.16 An Institution should document practices and procedures to set out the steps that it takes when it receives requests for Equity Release Financial Products from such Consumers. For this purpose, such practices and procedures should be designed to assist Consumers that Institutions understand have, or reasonably suspect of having, financial difficulties to overcome, the effect of the limitations and place them, to the extent possible, on an equivalent basis to Consumers who do not have such difficulties, to increase the likelihood of Consumers being able to make informed decisions in relation to the acquisition of Equity Release Financial Products.
- R.3.2.17 Where an Institution understands, or reasonably suspects that a Consumer has or may have financial difficulties the Institution should use its business practices and procedures to:
1. assist the Consumer, where possible, to make an informed decision to enter into an Equity Release Transaction, in

- accordance with the requirements for the provision of Advisory Services contained in this Chapter;
2. ensure that such decision is informed and responsible in the circumstances and mitigates the potential risks to the Consumer; and
 3. ensure that the Consumer is not provided with Equity Release Financial Products which the Institution knows, or reasonably believes to be unsuitable for the Consumer or otherwise does not meet the Consumer's demands and needs.

Section 3 Non-Advisory Services

R.3.3.1 Where an Institution provides Non-Advisory Services to a particular Consumer to enter into an Equity Release Transaction, or vary an existing Equity Release Transaction, it must take reasonable steps to ensure that the Equity Release Transaction is appropriate for that Consumer. For this purpose, an Institution shall implement policies and procedures to enable it to collect and assess all information necessary to conduct an appropriateness assessment for each Consumer.

R.3.3.2 The appropriateness assessment should be performed in addition to the assessment of demands and needs set out in Section 2 of this Chapter. In this respect, an Equity Release Transaction will not be appropriate for the Consumer unless that Equity Release Transaction meets the demands and needs of the Consumer.

R.3.3.3

When an Institution assesses whether the Equity Release Transaction is appropriate to the circumstances of the Consumer, the Institution shall, as a minimum, have regard to the following factors and collect the necessary information from the Consumer in relation to such factors:

1. whether the benefits to the Consumer outweigh any adverse effect on: (a) the Consumer's entitlement (if any) to means-tested benefits; and (b) the Consumer's tax position (for example the loss of any applicable tax allowances), provided that the Institution shall also issue the necessary recommendation in terms of Rule R.3.1.7;
2. the Consumer's financial situation, including income, savings, debts, liquidity, etc.;
3. whether the Consumer can resort to alternative methods of raising the required funds;
4. whether the Consumer is under pressure from any person to raise money for an ill-advised purpose, for which purpose, the Institution shall ascertain all relevant facts, including, but not limited to, details of family members and the Consumer's relationship with them as may be relevant. Factors which may alert the Institution's attention to the possibility of such undue influence would be when the Consumer is borrowing money for the benefit of a third party, or to gift to a third party, and there are objective indications of pressure or influence from others (e.g. family members); when the Consumer has physical or Mental Capacity limitations; when the Consumer is dependent upon family members to look after their financial affairs; when there is family division, typically between the Consumer's adult children; and when the Consumer is in an inexplicable rush to complete the Equity Release Transaction ;
5. knowledge of that Consumer of Equity Release Financial Products;
6. whether the Consumer's requirements appear to be within the Institution's known eligibility criteria for the Equity Release Transaction in accordance with the provisions of this Rulebook and the Regulations;
7. the Consumer's preferences for his estate (for example, whether the Consumer wishes to be certain of leaving a bequest to his family or others);
8. the Consumer's life expectancy;

9. the Consumer's future plans and needs (for example, whether the Consumer is likely to need to raise further funds);

R.3.3.4 An Institution shall provide the Consumer with a report in a Durable Medium, which shall be signed by the Institution. This shall, as a minimum:

1. specify the Consumer's demands and needs;
2. if applicable, explain why the Institution has concluded that the Equity Release Transaction is appropriate for the Consumer, including how it meets the Consumer's demands, needs and personal circumstances, and taking into account the factors listed in Rule R.3.3.3; and
3. if applicable, include a written warning when, considering the Consumer's circumstances, an Equity Release Financial Product may include a specific risk for that Consumer in accordance with Rules R.3.3.6 and R.3.3.7.

Guidance Note: The institution may ask the consumer to countersign the report as well however this can only be allowed if there is included a declaration wherein the individual servicing the consumer confirms that he/she has explained all the product's risks and features.

R.3.3.5 The records in required in terms of this Section must be retained for a minimum of five years from the termination of the Credit Agreement.

R.3.3.6 In the case that the Institution considers, on the basis of the appropriateness assessment, that the Equity Release Transaction is not appropriate to the Consumer, the Institution shall warn the Consumer. This warning may be provided in a standardised format. The Consumer may still elect to enter into the Equity Release Transaction notwithstanding the warning.

R.3.3.7 Although the warnings may be given in standardised format, it should not form an integral part of the document which the Institution uses to test the appropriateness of the Equity Release Transaction vis-a-vis the Consumer. Such a warning should be in a separate document and should only be provided to the Consumer in the circumstances envisaged by Rule R.3.3.6.

Section 4 Advisory Services

- R.3.4.1 Where the Institution offers more than one Equity Release Financial Product, then that Institution may only engage in Equity Release Transactions on an Advisory Services basis. Advisory Services may also be provided upon request of the Consumer.
- R.3.4.2 Where an Institution provides Advisory Services to a particular Consumer to enter into an Equity Release Transaction, or vary an existing Equity Release Transaction, it must take reasonable steps to ensure that the Equity Release Transaction is suitable for that Consumer. For this purpose, an Institution shall implement policies and procedures to enable it to collect and assess all information necessary to conduct a suitability assessment for each Consumer.
- R.3.4.3 In the context of Advisory Services, the suitability assessment that the Institution shall carry out includes the following:
1. the demands and needs assessment in accordance with Section 2 of this Rulebook; and
 2. an assessment provided for in Rule R.3.3.3.
- R.3.4.4 Following the carrying out of a suitability assessment in accordance with this Section of the Rulebook, the Institution shall further provide a personal recommendation to the Consumer in connection with an Equity Release Financial Product which is assessed as being suitable for the Consumer.
- R.3.4.5 No advice must be given to a Consumer to enter into an Equity Release Transaction if there is no Equity Release Financial Product which is suitable from the product range offered by the Institution.

- R.3.4.6 Before the provision of an Advisory Services, or, where applicable, the conclusion of a contract for the provision of an Advisory Services, the Institution shall provide the Consumer with the following information in a Durable Medium:
1. whether the Equity Release Transaction meets the Consumer's demands and needs
 2. whether the personal recommendation will be based on considering only its own product range or a wide range of products from across the market;
 3. where applicable, any commissions received or to be received by the Institution with respect to the provision of the Advisory Services; and
 4. where applicable, the exact fee payable by the Consumer for the Advisory Services or, where the amount cannot be ascertained at the time of disclosure, the method used for its calculation.
- R.3.4.7 For the purposes of Rule R.3.4.6 (2), where applicable, an Institution must consider a sufficiently large number of Equity Release Financial Products in its product range in providing Advisory Services to a Consumer.
- R.3.4.8 Where the advice provided is based on a selection of Equity Release Transactions from a single Institution, the assessment of suitability should not be limited to the types of Equity Release Transactions which that Institution offers. An Institution cannot recommend the 'least worst' Equity Release Transaction where the Institution does not have access to products which are suitable for the Consumer. This means, for example, that if an Institution only has access to lump sum Equity Release Transactions it should not recommend or arrange one of these if approached by a Consumer requiring regular payments.
- R.3.4.9 In addition to the contents listed in Rule R.3.4.6, the report shall also:
1. confirm that Advisory Services have been provided by the Institution to the Consumer; and
 2. provide an outline of the personal recommendation provided.

- R.3.4.10 Institutions shall not create any ambiguity or confusion about their responsibilities in the process when providing Advisory Services in accordance with this Rulebook. For this purpose, the Institution shall inform Consumers, clearly and simply, that the reason for assessing whether an Equity Release Financial Product is suitable for the Consumer is to enable the Institution to act in that Consumer's best interest, so that Consumers understand the reason why they are asked to provide certain information and the importance of such information being up-to-date, accurate and complete. This shall also include a clear explanation that it is Institution's responsibility to conduct the assessment. Such information may be provided in a standardised format.
- R.3.4.11 An Institution providing Advisory Services must make and retain a record:
1. of the Consumer information, including that relating to the Consumer's needs and circumstances and that obtained for the purposes of carrying out the assessment in accordance with this Section;
 2. that explains why the Institution has concluded that any personal recommendation given to a Consumer is suitable for that Consumer; and
 3. of any personal recommendation which the Consumer has rejected, including the reasons why they were rejected and details of the Equity Release Transaction which the Consumer has proceeded with as an execution-only sale.
- R.3.4.12 The records in required in terms of this Section must be retained for a minimum of five years from the termination of the Credit Agreement.

Section 5 Execution-only sales

- R.3.5.1 An Institution may only enter into an Equity Release Transaction with a Consumer as an execution-only sale, i.e. without providing Advisory Services or Non-Advisory to such Consumer, if the Consumer has rejected either the advice following the provision of Advisory Services, or non-advisory service and has identified the product s/he wishes to purchase and positively elected to proceed with an execution-only sale. For avoidance of doubt, execution-only sales cannot be provided in any other circumstance.
- R.3.5.2 An Institution must not encourage a Consumer to reject advice received by him/her on Equity Release Transactions in the context of an Advisory Service.

R.3.5.3

An Institution must not enter into an execution-only sale for an Equity Release Transaction unless:

1. the Consumer has rejected the advice given by the Institution and instead requested an execution-only sale of an Equity Release Transaction or has otherwise decided not to follow the outcome of the appropriateness assessment carried out by the Institution in the context of Non-Advisory Services;
2. the Consumer has identified which particular Equity Release Transaction s/he wishes to purchase, and specified to the Institution at least the required additional information (where applicable), which additional Information may include, but shall not be limited to, the rate of interest, the interest rate type, and the sum that the Consumer wishes to borrow (including the amount of any lump sum, any regular drawdown or flexible facility or any combination of amounts the Consumer wishes to apply for), and the Institution has communicated such Information to the Consumer;
3. after providing the required Information in (2), the Consumer has been informed, clearly and prominently and in a Durable Medium, and that the Consumer will not benefit from the protection of the rules (in Sections 3 and 4 of this Chapter, as applicable) on assessing appropriateness and/or suitability:
 - a. in any case where the Institution has advised the Consumer that the Equity Release Transaction is unsuitable for the Consumer, that that is the case; and
 - b. in any other case, that the Equity Release Transaction is not appropriate for the Consumer;

In any case where there is spoken dialogue between the Institution and the Consumer at any point, the Institution must also provide this information orally; and

4. after the Consumer has been provided with the information in (3), in any case where there is spoken or other interactive dialogue between the Institution and the Consumer at any point, the Consumer has confirmed in writing to the Institution that s/he is aware of the consequences of losing the protections of the rules on assessing appropriateness and suitability and is making a positive election to proceed with an execution-only sale. The written confirmation must be in the same document as the information in Durable Medium in (3), which must be separate

from any other information and contractual documentation.

R.3.5.4 The condition in Rule R.3.5.3 (1) does not apply in the case of a variation of an Equity Release Transaction, provided that:

3. the variation would not involve the Consumer taking on additional borrowing beyond the amount currently outstanding under the existing Equity Release Transaction, other than to finance any product fee or arrangement fee for the proposed new or varied contract; and
4. where the variation will (in whole or part) change from one interest rate to another, the Institution has presented to the Consumer, in a Durable Medium, all products offered by it for which the Consumer is eligible. Examples of rate changes are a transfer from a capped rate to a fixed rate; and a transfer from one fixed rate to another fixed rate.

Provided further that the reference to a variation in (1) of this Rule (and in all other provisions which cross-refer to this rule) must be read as including any new Equity Release Transaction which would replace an existing Equity Release Transaction between the Consumer (or, where there are joint borrowers, at least one of them) and the Institution (either as the original equity release provider or as the transferee of the existing contract).

R.3.5.5 The variation in Rule R.3.5.4 might involve the addition or removal of a borrower for joint Equity Release Transactions or a change in payment method. This list is not exhaustive.

R.3.5.6 Institutions are reminded that, if their presentation in Rule R.3.5.4 (2) has (either explicitly or implicitly) steered the Consumer towards any one or more of the products offered by them such as to constitute advice, the requirements of Section 4 of this Chapter will apply.

R.3.5.7 Where an Institution enters into an execution-only sale for an Equity Release Transaction in terms this Section, it must make and maintain a record of:

1. the information provided by and that provided to the Consumer in terms of Rule R.3.5.3; and
2. any advice from the Institution which the Consumer rejected, including the reasons why it was rejected, before deciding to enter into an execution-only sale.

R.3.5.8 The records required in terms of Rule R.3.5.8 must be retained for a minimum of five years from the termination of the Credit Agreement.

Section 6 Remuneration and performance management

R.3.6.1 This Section does not apply to Credit Institutions and European Credit Institutions, since these Institutions are already subject to applicable rules on remuneration practices.

R.3.6.2 Institutions shall ensure that the manner in which Staff are remunerated does not impede compliance with the obligation to act in accordance with the Regulations and this Rulebook and, in particular, there should be no direct or indirect targets imposed on Staff which could be detrimental to Consumers. For this purpose, Institutions shall ensure that the remuneration structure of the Staff involved does not prejudice their ability to act in the Consumer's best interest and in particular is not contingent on sales targets. The board of directors of the Institution shall also define, approve and oversee a remuneration policy of Staff aiming to encourage responsible business, conduct, fair treatment of Consumers as well as avoiding conflict of interest in the relationships with Consumers.

R.3.6.3 An Institution must in relation to any risk of failure by the Institution to comply with its obligations arising from its remuneration or performance management policies, procedures and practices:

1. establish, implement and maintain adequate policies and procedures designed to detect this risk; and
2. put in place adequate measures and procedures designed to manage this risk.

An Institution must, when deciding how to comply with the above, take into account the nature, scale and complexity of its business, and the nature and range of services and activities undertaken in the course of that business.

R.3.6.4 Examples of measures and procedures which Institutions might introduce, where appropriate, to manage the risks to which this section applies, include:

1. defining and implementing remuneration policies and practices under appropriate internal procedures taking into account the interests of Consumers, and periodically reviewing such remuneration policies and practices;
2. undertaking monitoring of the nature of sales activities in relation to Equity Release Transactions;
3. collecting management information to enable the Institution to monitor and identify trends or patterns in Staff behaviour that could be used to detect these risks, including, but not limited to, via a review of Consumer complaints received in relation to the provisions of Equity Release Financial Products;
4. establishing procedures to ensure appropriate actions are taken if a Staff member is found to have behaved inappropriately; and
5. maintaining arrangements to ensure the approval, oversight and regular review of remuneration and performance management arrangements by an appropriate remuneration committee or senior management.

- R.3.6.5 When designing remuneration policies and practices, an Institution shall ensure that the ratio between the fixed and variable components of the remuneration is appropriate in order to take into account the best interests of Consumers. To this end, the remuneration policies and practices shall allow for the operation of a flexible policy on variable remuneration, including, where appropriate, the possibility to pay no variable remuneration at all.
- R.3.6.6 An Institution's remuneration policies and practices shall define appropriate criteria to be used to assess the performance of Staff, which assessment shall not be solely or predominantly based on quantitative commercial criteria, but shall also be based on qualitative criteria encouraging Staff to act in the best interests of the Consumer, which criteria shall be clearly defined, recorded, and made available to Staff at the onset.
- R.3.6.7 The board of directors of the Institution shall approve the remuneration policy, after taking advice from the compliance function. Senior management of the Institution shall be responsible for the day-to-day implementation of the remuneration policy and the monitoring of compliance risks related to the policy. The compliance officer of the Institution shall verify that the Institution's remuneration policies and practices comply with this Rulebook and shall have access to all relevant documents for this purpose.
- R.3.6.8 An Institution's remuneration policies and practices shall include and provide for the maintenance of measures to effectively enable it to identify where the Institution fails to act in the best interests of Consumers and to take remedial action.
- R.3.6.9 An Institution shall set up and maintain adequate controls to ensure compliance with its remuneration policies and practices to ensure that they deliver the intended outcomes. Such controls should include at the very least monitoring calls with Consumers, sampling of Consumer files to check suitability in the provision of Advisory Services and appropriateness in the provision of Non-Advisory Services and going through documentation pertaining to Consumer files on a regular basis.

Chapter 4 Complaints Handling

Section 1 Complaints Management Policy

- R.4.1.1 An Institution shall ensure that its existing complaints management policy is updated to cover the settlement of complaints from Consumers concerning their rights and obligations pursuant to the Regulations.
- R.4.1.2 The complaints management policy shall be defined and endorsed by the Institution's board of directors, who shall also be responsible for ensuring its implementation and for monitoring compliance with it.
- R.4.1.3 The complaints management policy shall be made available to all relevant Staff of the Institution through an adequate internal channel and adequate training must be provided.
- R.4.1.4 The Institutions' complaints management policy should include, as a minimum, procedure for:
- a) lodging a complaint with the Institution by any reasonable means (including complaints submitted by an authorised representative of the Consumer such as a family member or a lawyer) and confirmation that this is free of charge;
 - b) handling complaints received including deadlines,
 - c) ensuring the fair treatment of Complainants;
 - d) informing the Complainants of the services offered by the Office of the Arbiter for Financial Services and the contact details in relation thereto, should the Complainant not be satisfied with the resolution of the complaint by the Institution;
 - e) the proper treatment of a Complainants' information and personal data according to the applicable legal framework;
 - f) preventing, identifying and managing possible situations of conflicts of interest in complaints management;
 - g) the prompt, equal, fair and efficient management of complaints;
 - h) the adequate training of Staff participating in complaints handling within the Institution; and
 - i) internal reporting, follow-up and monitoring of compliance with the complaints management policy.

Section 2 Complaints Management Function

- R.4.2.1 Institutions shall have in place a Complaints Management Function which shall enable them to investigate complaints fairly and to identify and mitigate any possible conflicts of interest.
- R.4.2.2 Institutions shall inform the MFSA of the identity and contact details of the individual or individuals, as the case may be, involved in the Complaints Management Function and any changes thereto.
- R.4.2.3 Irrespective of the specific model that an Institution may have adopted for complaints handling, the Institution shall:
- a) appoint at least one senior manager with overall regulatory responsibility for the Complaints Management Function, as the Institution deems appropriate;
 - b) ensure the necessary internal flows of information and reporting lines for complaints management, as the Institution deems appropriate; and
 - c) control the effective and efficient treatment of complaints.
- R.4.2.4 The set-up and composition of the Complaints Management Function shall be proportionate to the nature, scale and complexity of the Institution and its activities. Where the Institution is considered as small, it might not be possible for the Institution to structure its internal organisation in such a way that it has a separate Complaints Management Function handling the complaints management function or process and this may therefore fall within the remit of, for example, the compliance team. In any event, the Institution should still ensure that it operates in a manner that ensures that complaints are handled fairly and impartially and that they identify and mitigate conflicts of interest.

Section 3 Registration of Complaints

- R.4.3.1 Institutions shall register any complaints it receives in a Complaints Register, as soon as they are received, together with any action taken with respect to such complaints.
- R.4.3.2 The Complaints Register may be maintained in the form of a secure electronic register.

- R.4.3.3 Institutions shall include in the Complaints Register, for each complaint, the date of receipt and the date on which it was resolved.
- R.4.3.4 Without prejudice to the provisions of the Data Protection Legislation, an Institution shall ensure that:
- a) the Complaints Register contains all necessary information in relation to the complaint and complainant, including, *inter alia*:
 - (i) the subject of the complaint;
 - (ii) data on the Complainant;
 - (iii) date of receipt, and replying to, the complaint;
 - (iv) result or outcome of the complaints handling procedure;
 - (v) the applicable rights and obligations of the Complainant under the Regulations; and
 - b) documentation relating to the complaint is be kept and archived in a secure manner for a period of five years
- R.4.3.5 The MFSA may at any time require the Institution to provide it with a copy of the Complaints Register;

Section 4 Internal Follow-up of Complaints

- R.4.4.1 Institutions shall analyse, on an on-going basis, complaints handling data to ensure that they identify and address any recurring or systemic problems, and potential legal and operational risks.
- R.4.4.2 Institutions shall carry out the analysis set out in Rule 4.4.1 of this Rulebook by, *inter alia*:
- a) analysing the causes of individual complaints so as to identify root causes common to types of complaint;
 - b) considering whether such root causes may also affect other Equity Release Financial Products or Equity Release Transactions as well as other processes or product, including those not directly complained of; and
 - c) correcting, where reasonable to do so, such root causes.
- R.4.4.3 An Institution shall have in place the following processes in order to comply with the proper internal follow-up of complaints:

- a) the collection of management information on the causes of complaints and the Products complaints relate to;
- b) a process to identify the root causes of complaints and to prioritise dealing with the root causes of complaints;
- c) a process to consider whether the root causes identified may affect other Equity Release Financial Products or Equity Release Transactions as well as other processes or product;
- d) a process for deciding whether root causes discovered should be corrected and how this should be done; and
- e) regular reporting of information on recurring problems to the Institution's senior management.

Section 5 Provision of Information

R.4.5.1 Institutions shall:

- a) on request or when acknowledging receipt of a complaint, provide written information to Consumers regarding the Institution's complaints handling process;
- b) publish details of their complaints handling process in an easily accessible manner;
- c) provide clear, accurate and up-to-date information about the complaints handling process, including:
 - (i) details of how to make a complaint; and
 - (ii) the process that will be followed when handling a complaint;
- d) keep the Complainant informed about further handling of the complaint.

R.4.5.2 For the purposes of rule 4.5.1 paragraph (b) of this Rulebook, Institutions shall publish details of their complaints handling process in brochures, pamphlets, contractual documents or via the Institution's website.

For the purposes of rule 4.5.1 paragraph (c) (i) of this Rulebook, Institutions shall include the type of information to be provided by the Complainant and the identity and contact details of the person or department to whom this complaint should be directed.

For the purposes of rule 4.5.1 paragraph (c) (ii) of this Rulebook, Institutions shall provide information on when the complaint will be acknowledged, an indication of handling timelines, and the availability of the Office of the Arbiter for Financial Services and of alternative dispute resolution mechanisms in the case that a dispute remains unresolved.

Section 6 Procedure for Responding to Complaints

R.4.6.1 Institutions shall:

- a) in writing, acknowledge receipt of any complaint upon receipt;
- b) where a complaint is made orally, the Institution shall make a summary of the complaint and request the Complainant to confirm in writing the said summary;
- c) seek to gather and investigate all relevant evidence and information regarding the complaint;
- d) communicate in plain language, which is clearly understood;
- e) provide a response without unnecessary delay, and in any event by not later than fifteen working days from when the complaint was registered. Where the investigation of a complaint is not completed within fifteen working days from the receipt of the complaint, the Institution shall:
 - (i) inform the Complainant about the causes of the delay; and
 - (ii) provide an indication as to when the investigation is likely to be completed.
- f) when providing a final decision in terms of Rule 4.6.1(e) above that does not fully satisfy the Complainant's demand, the Institution shall provide a thorough explanation of the Institution's position on the complaint:
 Provided that if the Complainant is not satisfied with the way the complaint was resolved by the Institution in terms of this Rule 4.6.1(f), the Complainant may refer the complaint to the Office of the Arbiter for Financial Services. Such decision shall be provided in writing; and
- g) make use of the Maltese language when communicating with the Complainant, including, but not limited to, insofar as

decisions in relation to the complainant are concerned, when so requested by the Complainant.

Section 7 Reporting to the MFSA

R.4.7.1 Institutions shall provide information on complaints and complaints handling to the MFSA as and when required in any format as required by the MFSA. This data shall, as a minimum, cover the number of complaints received on Equity Release Financial Product, and the cause of the complaint.

R.4.7.2 Without prejudice to Rule 4.7.1 above, where a complaint has been lodged with the Office of the Arbiter for Financial Services and the case has been resolved, the Institution shall immediately provide the MFSA with a copy of the Arbiter's final decision. The Institution shall also notify the MFSA immediately, in the event that an appeal from the decision of the Arbiter is lodged by the Complainant or by the Institution itself, in terms of the Arbiter for Financial Services Act (Cap.555 of the laws of Malta), and once such appeal has been decided by the Court of Appeal (Inferior Jurisdiction).

Section 8 Unrelated Complaints

R.4.8.1 Where an Institution receives a complaint about:

- a) activities other than those regulated by the MFSA; or
- b) the activities of another financial services provider for which the Institution has no legal or regulatory responsibility (and where those activities form the substance of the complaint), the provisions of this Chapter 4 of the Rulebook shall not apply to such Institution.

R.4.8.2 Notwithstanding the provisions of Rule 4.8.1 above, the Institution should where possible, explain its position on the complaint and/or, where appropriate, direct the Complainant to the relevant Institution or other financial services provider responsible for handling the complaint or to any other appropriate body which may deal with the complaint and/or seek independent professional advice.

- R.4.8.3 Where an Institution complies with the requirement of Rule 4.8.2, it shall not be required to handle the complaints under Rule 4.1.1, Rule 4.2.1 and Rules 4.3.1-4.7.1 of this Rulebook.

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, provided that where the fees charged by the valuer are dependent on the valuation assigned to the property, this should be considered as impairing the independence of the valuer, subject to the Valuation Rules prescribed by this Chapter being adhered to. 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. Valuers who are employed

by the Institution are not considered to be independent for the purposes of Rule R.5.1.1.

- 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).

