



CREDIT INTERMEDIARIES RULE

CREDIT INTERMEDIARIES' RULE

INTRODUCTION

1. In terms of regulation 3B (3), 6(9) and 18A(16) of the Credit Agreements for Consumers relating to Residential Immovable Property Regulations (S.L. 378.10) (“the Regulations”), the MFSA as a competent authority appointed under regulation 3A of the Regulations, may issue Credit Intermediaries’ Rules in order to better carry out and to better implement the provisions of the Regulations
2. This Credit Intermediaries’ Rule (“the Rule”) is being issued pursuant to regulations 6(3) and 18A(8) of the Regulations which require the MFSA to publish requirements for admission under the Regulations
3. The Rule partly transposes and implements Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, (“the Mortgage Credit Directive”).
4. It should be emphasised that the Rule must not be construed to be a substitute for a reading of the Regulations themselves. Interested parties should therefore refer to the Regulations, read and understand their implications thoroughly and are also encouraged to seek legal advice to achieve this aim.

SCOPE AND APPLICATION

5. Unless otherwise defined, the words and expressions which are used in this Rule shall have the same meaning as in the Regulations.
6. Part I of the Rule applies to any natural or legal person desirous of carrying out credit intermediation activities or advisory services in terms of the definitions of ‘credit intermediary’ and ‘advisory services’ in regulation 2 of the Regulations.
7. The scope of Part I is to determine:
 - a) the manner in which a person shall apply for admission with the MFSA pursuant to regulation 18A(2) of the Regulations; and
 - b) the particulars of persons that are to be entered in the credit intermediaries register pursuant to regulation 18A(12) of the Regulations.

8. Part II of the Rule applies to creditors and credit intermediaries as defined in regulation 2 of the Regulations.
9. The scope of Part II is to determine the knowledge and competence requirements for staff of creditors and credit intermediaries pursuant to regulation 18A(8) of the Regulations.

PART I

ADMISSION OF CREDIT INTERMEDIARIES

10. Pursuant to regulation 18A(1) of the Regulations, any credit intermediary who carries out all or part of the credit intermediation activities in terms of the definition of 'credit intermediary' in regulation 2 of the Regulations, or who provides advisory services in or from Malta shall apply for admission with the MFSA in terms of this Rule.
11. The manner in which a person shall apply for admission with the MFSA is set out in the First Schedule to this Rule.
12. Tied credit intermediaries may be admitted by the Authority through the creditor on whose behalf the tied credit intermediary is exclusively acting.
13. The manner in which a creditor referred to in paragraph 12 shall apply for admission of a tied credit intermediary with the MFSA, is set out in the Second Schedule to this Rule.

THE CREDIT INTERMEDIARIES REGISTER

14. All Maltese credit intermediaries admitted with the MFSA shall be entered into a register established by the MFSA in terms of regulation 18A of the Regulations. The Authority shall ensure that the said register is kept up to date and is publicly available on its website.
15. The particulars to be entered in the credit intermediaries register, in accordance with regulation 18A(12) of the Regulations, are those set out in the Third Schedule to this Rule.

PART II

KNOWLEDGE AND COMPETENCE REQUIREMENTS FOR STAFF OF CREDITORS AND CREDIT INTERMEDIARIES

16. Pursuant to regulation 6 of the Regulations, Maltese creditors and Maltese credit intermediaries shall ensure that their staff, as defined in regulation 2 of the Regulations, have a minimum of three years professional experience in relation to the origination, distribution or intermediation of credit products, as well as a qualification of at least MQF level 3 or equivalent which satisfies the principles set out in the Third Schedule to the Regulations.
17. Furthermore, persons involved in the management of the credit intermediary shall have a minimum of five years professional experience in relation to the origination, distribution or intermediation of credit products, as well as a qualification of at least MQF level 3 which satisfies the principles set out in the Third Schedule to the Regulations
18. For the purposes of paragraph 17 above, the phrase '*persons involved in the management*' refers to directors, partners and natural persons performing equivalent tasks.
19. Where a European creditor or a European credit intermediary provides its services within the territory of Malta through the establishment of a branch, the same requirements set out in paragraphs 16 and 17 above shall apply.
20. Where a Maltese creditor or a Maltese credit intermediary provides its services within the territory of one or more other Member States through the establishment of a branch, the authority responsible for establishing the minimum knowledge and competence requirements applicable to the staff of such branch, shall, in accordance with paragraph (i) of Article 9(3) of the MCD, be the European regulatory authority of the host Member State.
21. Where a Maltese creditor or a Maltese credit intermediary provides its services within the territory of one or more other Member States under the freedom to provide services, the same requirements as referred to in paragraphs 16 and 17 above shall apply. The European regulatory authority of the host Member State may, in accordance with paragraph (ii) of Article 9(3) of the MCD establish minimum knowledge and competence requirements referred to in paragraph 1(b), (c), (e) and (f) of Annex III to the MCD.

FIRST SCHEDULE

Application for admission with the MFSA in terms of regulation 18A of the Regulations (applicable in the case of credit intermediaries which are not who act on behalf of and under the full and unconditional responsibility of only one creditor)

Director-General
Malta Financial Services Authority

I hereby apply for admission with the MFSA under regulation 18A of the Regulations:

| | |
|-----------|--|
| A1 | Details of the credit intermediary (for legal persons) |
|-----------|--|

| | | | |
|-------|--|---|------------------------|
| A.1.1 | Name of credit intermediary | Date of registration under the Companies Act, 1995 (<i>day/month/year</i>):- | |
| | Registration number:- | Address of registered office including Post Code:- | |
| | Address of head office including Post Code (if different from the registered office address):- | | |
| | Telephone or Mobile Number | | General E-Mail Address |

| | | |
|-------|---|-----------------------------|
| A.1.2 | Name of the credit intermediary's legal consultants (if applicable) | Address including Post Code |
| | | |

| | | | |
|--|------------------|------------|----------------|
| | Telephone Number | Fax Number | E-Mail Address |
|--|------------------|------------|----------------|

Note 1

Where an applicant is a company in formation, details required by the application form which are not available at the time of submission are to be provided as soon as these are available.

| | |
|-----------|--|
| A2 | Details of the credit intermediary (for individuals) |
|-----------|--|

| | | | |
|-------|-------------------------------|------------------------------------|----------------|
| A.2.1 | Name of Individual | Any previous name by which known | |
| | Title | Office Address including Post Code | |
| | Date of Birth (dd/mm/yyyy) | ID/Passport Number and Nationality | |
| | Business Name | | |
| | Telephone or Mobile Number | | E-Mail Address |

| | | |
|-------|--|-----------------------------|
| A.2.2 | Name of the credit intermediary's legal consultants (if applicable) | Address including Post Code |
| | | |

| | | | |
|--|------------------|------------|----------------|
| | Telephone Number | Fax Number | E-Mail Address |
|--|------------------|------------|----------------|

B: Organisation of the credit intermediary and governance arrangements

B1. In the case of a legal person, names of the persons who are proposed to be appointed as directors or managers of the credit intermediary and their position:-

B2. Name of person who is proposed as contact person of the credit intermediary.

B3. Details of the applicant’s organisational structure and reporting lines. Attach staff organisational structure chart, if applicable.

C: Proposed activities

Please confirm which of the following activities the applicant intends to engage in:

| | |
|--|--------------------------|
| a) Presenting or offering mortgage credit agreements to consumers | <input type="checkbox"/> |
| b) Assisting consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements | <input type="checkbox"/> |
| c) Administration in respect of mortgage credit agreements other than as referred to in point (a) above | <input type="checkbox"/> |
| d) Concluding mortgage credit agreements with consumers on behalf of the creditor; | <input type="checkbox"/> |
| e) Providing advisory services to a consumer in respect of one or more transactions relating to mortgage credit agreements. | <input type="checkbox"/> |

Provide a detailed transaction flow diagram describing the transaction process from commencement to completion including the following items:

- Documentation/information provided to clients by the applicant and vice versa;
- The processing of client information;
- How the applicant will assess the information and determine suitable products/services;
- Breakdown of the fee/commissions to be received by the applicant; and
- Details of referral agreements or other agreements and arrangements that the applicant proposes to have in place with other parties with regards to the provision of its services.

D: Group structure (if applicable)

Confirm whether the applicant is part of a group.

If yes, include a detailed group organisation chart, setting out all group entities (i.e. the name of each undertaking within the group, whether these are regulated or not and any relationship to the applicant in terms of ownership, financial transactions or resources.

E: I.T. Systems, Website and Business Continuity Planning

Please provide a description of the following items:

- IT systems that the applicant has in place to provide its services;
- the procedure in place for amending the applicant's website (where relevant), including how long it would take for such an amendment to be made if it is to be effected by a third party and the contingency arrangement in place if the third party is no longer in business; and
- the back-up procedures that the applicant will carry out including the frequency of back-up and whether a cloud back-up will be utilised.

F: Professional Indemnity Insurance or Comparable Guarantee

Professional indemnity insurance indemnifying the credit intermediary

Amount of cover: -

Amount of excess: -

Comparable guarantee (please specify hereunder)

G: Passporting

Does the applicant propose to provide mortgage credit intermediation services from a branch set up outside Malta (freedom of establishment basis), or on a cross border (freedom of services) basis within the EU?

If YES, please confirm that the applicant has fully completed the Form for Notification of passporting on a freedom of establishment or freedom of services basis in terms of the Mortgage Credit Directive.

H: Documentation

Please provide the following additional documentation:

1. A written declaration that the scope of the applicant's memorandum and articles of association is sufficiently wide to permit the applicant to conduct its proposed activities.
2. Evidence that the applicant (including its staff in the case of a legal person) successfully obtained a qualification that meets the requirements set out in Part II of this Rule.
3. (a) A quotation of a policy of professional indemnity insurance;
(b) A copy of the comparable guarantee.
4. Personal Questionnaire (in the case of a legal person, a Personal Questionnaire must be filled in for all Directors of the credit intermediary and in the case of an individual credit intermediary, a Personal Questionnaire for that individual).
5. Shareholding structure chart and a police conduct certificate for each ultimate beneficial owner (in the case of a credit intermediary that is a legal person).

I: Declaration

The particulars provided in this application and the documents submitted therewith are complete and true to the best of my knowledge, information and belief. I hereby authorise the Authority to contact any person considered by the Authority to be relevant, both at the date of application and at any time in the future unless and until I rescind this authority in writing. I also undertake to inform the Authority in writing of any material change relevant to this application.

Signed _____ Date _____

Where the Credit Intermediary is a company, name of person signing on behalf of the Company: _____

Position

Title:

Signed _____ Date _____

SECOND SCHEDULE

Application by a Creditor for admission of a tied credit intermediary with the MFSA in terms of regulation 18A of the Regulations – (applicable in the case of tied credit intermediaries who act on behalf of and under the full and unconditional responsibility of only one creditor))

Director-General
Malta Financial Services Authority

I hereby apply for admission with the MFSA under regulation 18A of the Regulations of the person whose particulars are given hereunder.

Particulars of the person relevant to this application are provided herein.

| | |
|-----------|---|
| A1 | Details of the tied credit intermediary (for legal persons) |
|-----------|---|

| | | | |
|-------|--|---|------------------------|
| A.1.1 | Name of credit intermediary | Date of registration under the Companies Act, 1995 (<i>day/month/year</i>):- | |
| | Registration number:- | Address of registered office including Post Code:- | |
| | Address of head office including Post Code (if different from the registered office):- | | |
| | Telephone or Mobile Number | | General E-Mail Address |

| | | | |
|-------|--|-----------------------------|----------------|
| A.1.2 | Name of the tied credit intermediary's legal consultants | Address including Post Code | |
| | | | |
| | Telephone Number | | E-Mail Address |

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

Note 1

Where an applicant is a company in formation, details required by the application form which are not available at the time of submission are to be provided as soon as these are available.

| | |
|-----------|---|
| A2 | Details of the tied credit intermediary (for individuals) |
|-----------|---|

| | | | |
|-------|----------------------------------|------------------------------------|----------------|
| A.2.1 | Name of tied credit intermediary | Any previous name by which known | |
| | Title | Office Address including Post Code | |
| | Date of Birth (dd/mm/yyyy) | ID/Passport Number and Nationality | |
| | Business Name | | |
| | Telephone or Mobile Number | | E-Mail Address |

| | | | |
|-------|--|--|-----------------------------|
| A.2.2 | Name of the tied credit intermediary's legal consultants | | Address including Post Code |
| | Telephone Number | | E-Mail Address |

B: Organisation of the tied credit intermediary and governance arrangements

B1. In the case of a legal person, names of persons who are proposed to be appointed directors or managers of the tied credit intermediary and their position:-

B2. Name of person who is proposed as contact person.

B3. Details of the applicant's organisational structure and reporting lines. Attach staff organisational structure chart, if applicable.

C: Proposed activities

Please confirm which of the following activities the applicant intends to engage in:

| | |
|--|--------------------------|
| a) Presenting or offering mortgage credit agreements to consumers | <input type="checkbox"/> |
| b) Assisting consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements | <input type="checkbox"/> |
| c) Administration in respect of mortgage credit agreements other than as referred to in point (a) above | <input type="checkbox"/> |
| d) Concluding mortgage credit agreements with consumers on behalf of the creditor; | <input type="checkbox"/> |

| | |
|---|--------------------------|
| e) Providing advisory services to a consumer in respect of one or more transactions relating to mortgage credit agreements. | <input type="checkbox"/> |
|---|--------------------------|

Provide a detailed transaction flow diagram describing the transaction process from commencement to completion including the following items:

- Documentation/information provided to clients by the applicant and vice versa
- The processing of client information
- How the applicant will assess the information and determine suitable products/services
- Third parties to be utilised by the applicant
- Outsourced service providers involved in the process, if applicable.
- Breakdown of the fee/commissions to be received by the applicant;
- Details of referral agreements or other agreements and arrangements that the applicant proposes to have in place with other parties with regards to the provision of its services.

D: Group structure (if applicable)

Confirm whether the applicant is part of a group.

If yes, include a detailed group organisation chart, setting out all group entities (i.e. the name of each undertaking within the group, whether these are regulated or not and any relationship to the applicant in terms of ownership, financial transactions or resources.

E: I.T. Systems, Website and Business Continuity Planning

Please provide a description of the following items:

- IT systems that the applicant has in place to provide its services
- the procedure in place for amending the applicant’s website (where relevant) including how long it would take for such an amendment to be made if it is to be effected by a third party and the contingency arrangement in place if the third party is no longer in business;
- the back-up procedures that the applicant will carry out including the frequency of back-up and whether a cloud back-up will be utilised.

F: Professional Indemnity Insurance or Comparable Guarantee

Professional indemnity insurance indemnifying the tied credit intermediary

Amount of cover: - _____

Amount of excess: - _____

Comparable Guarantee (please tick the appropriate box)
(please specify hereunder)

Attach Letter of Undertaking from the creditor to provide professional indemnity insurance for its tied credit intermediary.

G: Passporting

Does the applicant propose to provide credit intermediation services from a branch set up outside Malta (freedom of establishment basis), or on a cross border (freedom of services) basis within the EU?

If YES, please confirm that the applicant has fully completed the Form for Notification of Passporting on a freedom of establishment basis or the Form for Notification of Passporting on a freedom of services basis in terms of the Mortgage Credit Directive.

H: Documentation

Please provide the following additional documentation:

1. A written declaration that the scope of the applicant's memorandum and articles of association is sufficiently wide to permit the applicant to conduct its proposed activities.
2. Evidence that the person in respect of who/which the application is being submitted has successfully obtained a qualified that meets the requirements set out in Part II of this Rule.
3. (a) A quotation of a policy of professional indemnity insurance;
(b) A copy of the comparable guarantee.
4. Shareholding structure chart and a police conduct certificate for each ultimate beneficial owner.

I: Declaration by the Creditor

I certify that the above information is complete and correct to the best of our knowledge and belief. After verifying to the extent possible, the information included in this application and following our own due diligence enquiries, the applicant

believes that the person is of good reputation to be admitted as tied credit intermediary. I confirm that each individual who is to carry out the tied credit intermediaries activities holds a clean police conduct certificate and satisfies the requirements set out in Part II of this Rule

Name of Creditor (in block capitals): _____

Registration No: (for legal Persons)
ID/Passport Number (for individual Creditors)

Where the Creditor is a company, name of person signing on behalf of the Company:

Position Title:

Signed _____ Date _____

THIRD SCHEDULE

Credit Intermediaries Register

| | |
|-----------------|---|
| <u>A</u> | <i>Personal Details</i> |
| A1 | <u>Particulars to be included in the case of individuals</u> |
| A1.1 | Full name |
| A1.2 | Any previous name/s by which known if applicable |
| A1.3 | Identity Card Number/ Passport Number |
| A1.4 | Office Address |
| A1.5 | Business telephone number/s. |
| A1.6 | Business e-mail address/es. |
| A2 | <u>Particulars to be included in the case of legal persons</u> |
| A2.1 | Name of body corporate |
| A2.2 | Date of registration under the Companies Act, 1995 (<i>day/month/year</i>). |
| A2.3 | Registration Number |
| A2.4 | Address of Registered Office |
| A2.5 | Address of Head Office (<i>if not the same as A2.4</i>). |
| A2.6 | Business telephone number/s. |
| A2.7 | Business e-mail address/es. |
| A2.8 | Full Name of Directors |
| A2.9 | Identity Card number/s of individual/s under A2.9. |
| B | <i>Host Member State</i> |
| B1 | Name |
| B2 | Type of Passport: freedom of establishment or freedom of services |
| C | <i>Tied Credit Intermediary YES/NO</i> |
| D | Creditor on whose behalf the Tied Credit Intermediary acts |
| D1 | Name of Creditor |
| D2 | Registration Number |
| D3 | Address of registered office |

