

# **CONDUCT OF BUSINESS RULEBOOK**

Rulebook for Credit Institutions Offering  
Retail Products and Services

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# REVISIONS LOG

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## Glossary of Definitions

Advertised Product or Service	For the purpose of this Rulebook, Advertised Product or Service means the Retail Product or Retail Service offered by a Regulated Person that is the subject of an Advertisement.
Account Information Service	An online service to provide consolidated Information on one or more payment accounts held by the Client with either another payment service provider or with more than one payment service provider.
Account Information Service Provider	A payment service provider pursuing business activities related to Account Information Services.
Advertisement	Advertisement means any form of representation, including a catalogue, a circular and a price list, about a trade, business, craft or profession in order to promote the supply or transfer of goods or services, immovable property, rights or obligations. The terms "Advertising" and "Advertise" shall be construed accordingly.
Advisory Services	The provision of personal recommendations to a Client in respect of one or more transactions relating to Credit Agreements and constitutes a separate activity from the granting of credit and from the credit intermediation activities in the terms of the definition Credit Intermediary.
Ancillary Service	A service offered to the Client in conjunction with the provision of a Retail Product or Service.
APRC	Annual Percentage Rate of Charge, which means the total cost of the credit to the Client, expressed as an annual percentage of the total amount of the credit, where applicable, including the costs referred to in R.1.2.77, and equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the Regulated Person and the Client.
Arbiter	The Arbiter for Financial Services appointed in terms of the <a href="#">Arbiter for Financial Services Act</a> .

ATM	Automated Teller Machine which functions as an electromechanical device that allows payment service users to withdraw cash from their accounts and/or access other services.
Branch	A place of business which forms a legally dependent part of a Regulated Person and which carries out directly all or some of the transactions inherent in the business of the Regulated Person.
Bundling	<p>The offering or the selling of a Retail Product in a package with other distinct financial products or services where the Retail Product can also be made available to the Client separately but not necessarily on the same terms and conditions as when offered bundled with other financial products.</p> <p>The term “Tied or Bundled Package” shall be construed accordingly and in accordance with the definition of “Tying Practice”. This would include Tied or Bundled Packages consisting of:</p> <ol style="list-style-type: none"><li>two different Retail Products;</li><li>a Retail Product and an insurance product; or</li><li>a Retail Product and an investment product.</li></ol>
Card Association	An organisation that facilitates payment card transactions, for example VISA and MasterCard.
Chinese Walls	An arrangement within the organisation of the Regulated Person (or between the Regulated Person and any associate of that Regulated Person) which requires Information held by the regulated entity (or as the case may be, any associate of that Regulated Person, or a particular operating unit within the Regulated Person or within any associate of that Regulated Person in the course of carrying on one part of its business of any kind) to be withheld in certain circumstances from other operating units or from persons with whom it deals in the course of carrying on another part of its business of any kind.
Client	<p>For the purpose of this Rulebook, a Client refers to:</p> <ol style="list-style-type: none"><li>a natural person making use of Retail Products who is acting for purposes of his/her personal accord, including instances whereby he/she is carrying out a business</li></ol>

venture, trade or profession under his/her own personal name; and

- b. a micro-enterprise that is defined as an enterprise which employs fewer than ten persons and whose annual turnover and/or annual balance sheet total (i.e. total of current and non-current assets before the deduction of current and non-current liabilities) does not exceed two million euro (€2,000,000). If a small company or a Special Purpose Vehicle falls within the definition of a micro-enterprise however such company is part of a larger group of companies, it would then no longer be considered as a micro-enterprise since it has the financial backing and expertise of the mother company within the group of companies.

The term 'Client' shall also be taken to refer to 'Potential Client' unless the context in which it is used infers otherwise.

Complainant	A Client, or a natural or legal person acting on behalf of the Client, who is presumed to be eligible to have a Complaint considered by a Regulated Person and who has already lodged a Complaint.
Complaint	A statement of dissatisfaction addressed to a Regulated Person by a Client, or a natural or legal person acting on behalf of the Client, relating to the business of banking and/or of any additional Retail Products or Services provided by the Regulated Person.
Compliance Officer	An official of a Regulated Person whose role is to ensure that the Regulated Person complies with all laws under which it operates and rules issued by the Regulator.
Credit Agreement	An agreement whereby a Creditor grants or promises to grant to a Client credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the Client pays for such services or goods for the duration of their provision by means of instalments.

For the purposes of this Rulebook, and in the context of a Credit Agreement relating to residential immovable property, this shall be distinct from the public deed of loan.

Consumer Credit  
Agreement

Notwithstanding the general definition of Credit Agreements, for the purposes of this Rulebook, Consumer Credit Agreements shall exclude Credit Agreements:

- a. entered into before 1<sup>st</sup> October 2010;
- b. which are secured by a hypothec, privilege, or land registry charge, or by a right related to immovable property;
- c. the purpose of which is to acquire or retain property rights over land and/or over an existing or projected building;
- d. involving a total amount of credit less than two hundred euro (€200) or more than seventy-five thousand euro (€75,000);
- e. relating to hiring or leasing where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by a separate agreement. Such an obligation shall be deemed to exist if it is so decided unilaterally by the Regulated Person;
- f. in the form of an overdraft facility and where the credit has to be repaid within one month;
- g. where the credit is granted free of interest and without any other charges;
- h. under the terms of which the credit has to be repaid within three months and only insignificant charges are payable;
- i. where the credit is granted by an employer to his employees as a secondary activity free of interest or at annual percentage rates of charge which are lower than those prevailing on the market and which are not offered to the public;
- j. which are concluded with European Investment Firms as defined in Article 2 of the [Investment Services Act \(Chapter 370\)](#) or with Banks or Credit Institutions or Electronic Money Institutions as defined in Article 2 of the [Banking Act \(Chapter 371\)](#) for the purpose of allowing an investor to carry out a transaction relating to one or more of the instruments listed in the Second Schedule to the [Investment Services Act \(Chapter 370\)](#) where the European Investment Firm or Bank or Credit Institution or Electronic Money Institution granting the Credit is involved in such transaction;
- k. which are the outcome of a settlement reached in court or before another statutory authority;
- l. which relate to the deferred payment, free of charge, of an existing debt;

- m. upon the conclusion of which the Client is requested to deposit an item as security in the Regulated Person's safe-keeping and where the liability of the Client is strictly limited to that pledged item; and
- n. which relate to loans granted to a restricted public under a statutory provision with a general interest purpose and at lower interest rates than those prevailing on the market or free of interest or on other terms which are more favourable to the Client than those prevailing on the market and at interest rates not higher than those prevailing on the market.

Provided that, Consumer Credit Agreements which qualify as:

- i. Overdraft Facility where the credit has to be paid on demand or within three months;
- ii. Overrunning;
- iii. Open-ended Credit Agreements entered into before 1<sup>st</sup> October 2010; and
- iv. Credit Agreements which provide for arrangements to be agreed by the Regulated Person and the Client in respect of deferred payments or repayment methods, where the Client is already in default on the initial Credit Agreement and where:
  - aa. such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and
  - bb. the Client would not thereby be subject to terms less favourable than those laid down in the initial Credit Agreement,

shall only be subject to the Rules specifically indicated in the relevant sections of this Rulebook.

Credit Agreements  
relating to Residential  
Immovable Property

Notwithstanding the general definition of Credit Agreements, for the purposes of this Rulebook, for Credit Agreements relating to Residential Immovable Property, the respective Rules shall only apply to:

- a. Credit Agreements which are secured by a hypothec or privilege on residential immovable property or secured by a right related to residential immovable property; and
- b. Credit Agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.

Notwithstanding these applicability criteria, those same Rules shall not apply to the following Credit Agreements:

- i. Equity release Credit Agreements where the Regulated Person:
  - aa. contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of a residential immovable property or a right relating to residential immovable property; and
  - bb. will not seek repayment of the credit until the occurrence of one or more specified life events of the consumer as may be defined by the competent authorities, unless the consumer breaches his contractual obligations which allows the Regulated Person to terminate the Credit Agreement;
- ii. Credit Agreements where the credit is granted by an employer to his employees as a secondary activity where such a Credit Agreement is offered free of interest or at an APRC lower than those prevailing on the market and not offered to the public generally;
- iii. Credit Agreements where the credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit;
- iv. Credit Agreements in the form of an overdraft facility and where the credit has to be repaid within one month;
- v. Credit Agreements which are the outcome of a settlement reached in court or before another statutory authority;
- vi. Credit Agreements which relate to the deferred payment, free of charge, of an existing debt and which do not fall within the scope of Credit Agreements which are secured by a hypothec or privilege on residential immovable property or secured by a right related to residential immovable property.

#### Credit Facility

The lending of a sum of money by way of an advance, overdraft or loan or any other line of credit including revolving credit, discounting of bills of exchange and promissory notes, guarantees, indemnities, acceptances and bills of exchange endorsed *pour aval*.

Credit Intermediary	<p>A natural or legal person who is not acting as a creditor or Notary Public and not merely introducing, either directly or indirectly, a Client to a Regulated Person or credit intermediary, and who, in the course of his trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration:</p> <ol style="list-style-type: none"><li>presents or offers credit agreements to Clients;</li><li>assists Clients by undertaking preparatory work or other pre-contractual administration in respect of credit agreements other than as referred to in paragraph (a); or</li><li>concludes credit agreements with Clients on behalf of the Regulated Person.</li></ol>
Creditor	<p>A natural or legal person who grants or promises to grant credit in the course of his trade, business or profession.</p>
Creditworthiness Assessment	<p>The evaluation of the prospect for the debt obligation resulting from the Credit Agreement to be met.</p>
Cross-selling	<p>The practice whereby Regulated Persons group, and sell at the same time, two or more separately identifiable Retail Products or Services under a Tying or Bundled Practice. This would involve products and services from the same sector (e.g. two Retail Products) and could also refer to the combination of products from different sectors (e.g. a Retail Product and an insurance or investment product).</p>
Deposit	<p>A sum of money paid in on terms under which it will be repaid with or without interest or a premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it.</p>
Deposit Account	<p>A bank account holding a sum of money paid-in on terms under which it will be repaid, with or without interest or a premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it. A Deposit Account can be a Payment Account, depending on its purpose of use and terms and conditions applicable.</p>
Distance Communication	<p>Any means of communication which, without the simultaneous physical presence of the Regulated Person and</p>



the Client, may be used for the distance Marketing of a Retail product between the Regulated Person and the Client.

Distance Contract	Any contract concerning Retail Products or Services concluded between a Regulated Person and the Client under an organised distance sales or marketing scheme run by the Regulated Person, who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.
Distance Marketing	The act of Marketing a Retail Product or Service by means of a Distance Communication.
Distributor <sup>1</sup>	A Regulated Person or Credit Intermediary who offers and/or sells the Retail Product to Clients; this includes business units of Regulated Persons that are not involved in the designing of the product but are responsible for bringing the product to the market.
Dormant or Inactive Account	A Payment Account or Deposit Account in relation to which there has been no transaction, neither deposits nor withdrawals having been posted within the previous consecutive twenty-four months, other than the posting of interest and/or service charges. The term 'Dormant Account' or 'Inactive Account' shall be used interchangeably.
Durable Medium	Any instrument which enables the Client or the Regulated Person to store Information addressed personally to that Client in a way accessible for future reference, for a period of time adequate for the purposes of the Information, and which allows the unchanged reproduction of the Information stored.
Electronic Money	Electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making Payment Transactions and that is accepted by a person other than the financial institutions that issued the Electronic Money.
Electronic Money Institution	A financial institution that has been licensed in accordance with the <a href="#">Financial Institutions Act (Chapter 376)</a> and

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<sup>1</sup> As defined in Annex I to BR24 Product Oversight and Governance Arrangements for Retail Products ([Annex I to BR24](#))



authorised to issue electronic money or that holds an equivalent authorisation in another country in terms of the [Electronic Money Directive](#) to issue Electronic Money.

Electronic Money Issuer	Entities referred to in Article 1(1) of the <a href="#">Electronic Money Directive</a> and institutions benefiting from the waiver under Article 1(3) of the <a href="#">Electronic Money Directive</a> and legal persons benefiting from a waiver under Article 9 of the <a href="#">Electronic Money Directive</a> .
ESIS	European Standardised Information Sheet, which consists of a single document whereby Regulated Persons must complete on the basis of information already provided on the current financial market conditions and which is valid for limited period of time as indicated on the document itself.
Fee Information Document	A document that reports the fees for using the services linked to a Payment Account. It helps Clients to compare these fees with those of other Accounts and shall be given to Clients by Regulated Persons.
Framework Contract	A payment service contract which governs the future execution of individual and successive payment transactions, and which may contain the obligation and conditions for setting up a payment account.
Forbearance Measure	<p>A concession by a Regulated Person towards Clients that are experiencing or are likely to experience difficulties in meeting their financial commitments. A concession may entail a loss for the Regulated Person and shall refer to either of the following actions:</p> <ol style="list-style-type: none"><li>a modification of the terms and conditions of a debt obligation, where such modification would not have been granted had the Client not experienced difficulties in meeting its financial commitments;</li><li>a total or partial refinancing of a debt obligation, where such refinancing would not have been granted had the Client not experienced difficulties in meeting their financial commitments.</li></ol>
Information	For the purpose of this Rulebook, Information refers to any material provided to Clients or potential Clients by the Regulated Person with the purpose to inform such Clients or

	potential Clients of any Retail Product or Service and respective terms and conditions thereof.
Initial Service Agreement	A primary agreement from which secondary agreements may result, such as, but not limited to the opening of a bank account or the acquiring of a credit card
Internet Banking	A service provided by the Regulated Person, other than Mobile Banking, which enables a Client to use the internet to access certain features and characteristics of the Retail Product which the Client holds.
Management Body	The person/s who either as a body constituted pursuant to law or as members of such body:  a. are authorised to represent the company in dealings with third parties and in legal proceedings; and b. take part in the administration, supervision or control of the company.
Manufacturer <sup>2</sup>	For the purpose of this Rulebook, a Manufacturer is a Regulated Person that designs (i.e. creates, develops, combines, or significantly changes) products to be offered to Clients.
Marketing	The establishment of unsolicited contact with the Client or a potential Client, by any means whatsoever, to promote the supply or provision of a Retail Product
MFSA	Malta Financial Services Authority  For the purposes of this Rulebook the terms "Authority" and "Regulator" shall be used interchangeably with the term "MFSA".
Minister	The Minister responsible for the regulation of Financial Services.
Mobile Banking	A software application provided by the Regulated Person which enables a Client, by use of an electronic device (including a smartphone, a tablet computer and a desktop

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<sup>2</sup> As defined under the EBA Guideline on Product Oversight and Governance Arrangements for Retail Products ([EBA/GL/2015/18](#))

computer) on which that application is installed, which, depending on the nature of the Retail Product to access certain features and characteristics of that Retail Product. The functionality, use and applicability of Mobile Banking varies depending on the type of Retail Product which the Client holds.

Net Disposable Income	Net Disposable Income refers to the residual income after deducting tax, National Insurance contributions, any alimony and any other financial commitments such as rent payable.
Overdraft Facility	An explicit credit agreement whereby a creditor makes available to a Client funds which exceed the current balance in the Client's current account.
Overrunning	A tacitly accepted overdraft whereby a Regulated Person makes available to a Client funds which exceed the current balance in the Client's current account or the agreed overdraft facility.
Payee	A natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction.
Payer	A natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order.
Payment Account	An account held in the name of one or more payment service users which is used for the execution of payment transactions, and through which Clients are able, at least, to: <ol style="list-style-type: none"><li>place funds in a Payment Account;</li><li>withdraw cash from a Payment Account; and</li><li>execute and receive payment transactions, including credit transfers, to and from a third party.</li></ol>
Payment Account with basic features	A Payment Account through which Clients are able at least to: <ol style="list-style-type: none"><li>services enabling all the operations required for the opening, operating, and closing of the payment account;</li><li>services enabling funds to be placed in the payment account;</li><li>services enabling cash withdrawals from the payment account within Malta and other Member States:</li></ol>

- i. at the counter of the publicly accessible premises of the credit institution, including any branches thereof, whether located in Malta or in any other Member State; and
  - ii. at automated teller machines;
- d. execution of the following payment transactions in and outside Malta:
- i. payment transactions through the payment card, including online payments;
  - ii. credit transfers, including standing orders, at, where available, terminals and counters and via the online facilities of the credit institution;
- e. execution of direct debits within the European Union.

Payment Initiation	A service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider.
Payment Initiation Service Provider	A payment service provider pursuing business activities related to Payment Initiation.
Payment Institution	A company that has been licensed in accordance with the <a href="#">Financial Institutions Act (Chapter 376)</a> or that holds an equivalent authorisation in another country in terms of the <a href="#">Payment Services Directive</a> to provide and execute Payment Services throughout the European Union.
Payment Instrument	A personalised device(s) and/or set of procedures agreed between the payment service user and the Payment Service Provider and used in order to initiate a Payment Order.
Payment Order	An instruction by a Client, being the Payer or Payee, to a Regulated Person or other Payment Service Provider requesting the execution of a Payment Transaction.
Payment Service	Any business activity set out in paragraph 2 of the Second Schedule of the <a href="#">Financial Institutions Act (Chapter 376)</a> .
Payment Service Provider	As per Article 2(1) of the <a href="#">Financial Institutions Act (Chapter 376)</a> a Payment Service Provider means:

- a. Credit Institutions, including branches thereof as defined in Article 2(1) of the [Banking Act \(Chapter 371\)](#) where such branches are located in the European Union, irrespective of whether the head offices of those branches are located within the European Union or, in accordance with Article 47 of the [Capital Requirements Directive](#) and national law, if they are located outside the European Union;
- b. Electronic Money Institutions, being companies that have been granted authorisation under Title II of the [Electronic Money Directive](#) to issue electronic money, including branches thereof, in accordance with Article 8 of that Directive and national law, where such branches are located within the European Union and their head offices are located outside the European Union, in so far as the payment services provided by those branches are linked to the issuance of Electronic Money;
- c. post office giro institutions that are entitled under national law of any Member State to provide Payment Services;
- d. Payment Institutions;
- e. account Information service providers;
- f. the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities; or
- g. Member States or their regional or local authorities when not acting in their capacity as public authorities.

**Payment Service User** A person making use of a Payment Service in the capacity of payer, payee, or both.

**Payment Transaction** An act initiated by the payer or on his behalf or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee.

**Product Governance and Oversight Policy (PGOP)** Refers to the policy outlining the responsibilities of Manufacturers to organise processes, functions and strategies aimed at designing, operating and bringing Retail Products to the market as well as offering such Retail Products to Clients, and reviewing them over the life of the Retail Product in order to minimise potential Client detriment,

avoid potential conflicts of interest and ensure that the interests and objectives of Target Markets are duly protected.

**Professional Diligence** Professional Diligence means the standard of skill and care which a Regulated Person may reasonably be expected to exercise towards Clients, commensurate with honest market practice and, or the general principle of good faith, in the Regulated Person's field of activity.

**Regulated Person** For the purposes of this Rulebook, a Regulated Person means persons holding a license in relation to the business of banking under the [Banking Act \(Chapter 371\), including a European Credit Institution which has established a branch in Malta in terms of the European Passport Rights for Credit Institutions Regulations \(S.L.371.11\)](#).

**Relevant Persons** Shall mean any of the following:

- a. a director, partner or equivalent, or manager of the Regulated Person;
- b. an employee of the Regulated Person, as well as any other natural person whose services are placed at the disposal and under the control of the Regulated Person and who is involved in the provision by the Regulated Person of Products and Services;
- c. a person who is directly involved in the provision of services to the Regulated Person under an outsourcing arrangement for the purpose of the provision by the Regulated Person of Products and Services.

**Remuneration** All forms of fixed and variable Remuneration, including payments made or benefits, monetary or non-monetary, awarded directly by or on behalf of institutions to relevant persons. Non-monetary benefits may include, but are not limited to, career progression, health insurance, discounts or provision of car or mobile phone, generous expense accounts or seminars.

**Retail Product<sup>3</sup>** For the purpose of this Rulebook, a Retail Product shall refer to any of the following:

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<sup>3</sup> Aligned with definition found under the EBA Guideline on Product Oversight and Governance Arrangements for Retail Products ([EBA/GL/2015/18](#))

- a. Credit Agreements relating to immovable property;
- b. Other forms of Credit Agreements for Clients in addition to that included in (i) provided by Manufacturers;
- c. Deposits Accounts;
- d. Payment Accounts;
- e. Payment Services;
- f. Payment Instruments;
- g. Other means of payment, as listed in point 5 of Annex I of [Directive 2013/36/EU](#) consisting of issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by Payment Services; or
- h. Electronic Money:

Provided that, for Payment Services, Payment Instruments, other means of payment and Electronic Money referred to in paragraphs (e) to (h), respectively, the requirements of this Rulebook are considered to apply *mutatis mutandis* with respect to matters which are not covered by the provisions of the [Central Bank of Malta Directive 1](#) issued in terms of the [Central Bank of Malta Act \(Cap. 204\)](#).

**Service** For the purposes of this Rulebook, Service shall refer to any action performed by a Regulated Person in connection with the delivery of a Retail Product.

**Social Media** Social Media share the characteristic of being digital and can be defined as websites and applications that enable users to create and share content or participate in social networking. The following is a non-exhaustive list:

- a. Blogs;
- b. microblogs (Twitter);
- c. social and professional networks (Facebook, LinkedIn, Google+);
- d. forums;
- e. image and video-sharing platforms (YouTube, Instagram, Vine, Pinterest).

**Soft Commission Agreement** Any agreement under which a Regulated Person receives goods or services, in return for which it agrees to direct

business through or in the way of another natural or legal person.

Staff	All employees of a Regulated Person and its subsidiaries within its scope of consolidation, including subsidiaries not subject to the <a href="#">Capital Requirements Directive</a> as transposed in the <a href="#">Banking Act (Chapter 371)</a> , any Regulations and Rules issued thereunder, and all directors sitting on the Management Body.
Switching (Switching Service)	The transferring, upon a Client's request, from one payment service provider to another either the Information about all or some standing orders for credit transfers, recurring direct debits and recurring incoming credit transfers executed on a payment account, or any positive payment account balance from one payment account to the other, or both, with or without closing the former payment account.
Target Market	A group of clients or potential clients to whom a particular Retail Product or Service is being offered by a Regulated Person.
Telephone Banking	A service provided by the Regulated Person, other than Mobile Banking, which enables a Client to use voice telephony to access certain features and characteristics of the Retail Product which the Client holds.
Tied Credit Intermediary	Any Credit Intermediary who acts on behalf of and under the full and unconditional responsibility of: <ol style="list-style-type: none"><li>only one Creditor;</li><li>only one group of Creditors; or</li><li>a number of creditors or groups which does not represent the majority of the market.</li></ol>
Tying Practice	<p>The offering or the selling of a Retail Product in a package with other distinct financial products or services where the Retail Product is not made available to the Clients separately.</p> <p>The term "Tied or Bundled Package" shall be construed accordingly and in accordance with the definition of "Bundling". This would include Tied or Bundled Packages consisting of:</p> <ol style="list-style-type: none"><li>two different Retail Products;</li></ol>



- b. a Retail Product and an insurance product; or
- c. a Retail Product and an investment product.

Unfair Commercial  
Practices Directive

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directive 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council, as amended from time to time.

Vulnerable Client

A Client who, due to their personal circumstances, is especially susceptible to harm particularly when a Regulated Person is not acting with appropriate levels of care.

# Chapter 1 Disclosures

## Introduction

In order for Clients to be able to make well informed decisions in relation to Retail Products and Services, they should have access to high-quality Information that is provided at the appropriate time, via suitable means, and that clearly explains the features and costs across the lifetime of such Retail Products. This applies to situations which require physical interaction between the Regulated Person and the Client and perhaps even more so when the relationship lacks this feature and instead relies on technological means through which both parties communicate and even conclude contracts at a distance.

This Chapter therefore highlights the importance of Regulated Persons providing adequate Information to Clients, existing and prospective, both on a pre- and post-contractual basis for Clients to be reasonably able to understand the nature and risks of the Retail Product or Service being provided. Such disclosures are to be made in good time prior to the conclusion of the contract leading to the purchase of the Retail Product, such that the Client would have adequate time to process the information and be in a position to take informed decisions.

Whilst there are a number of general rules and guidelines set out in this Chapter which are product agnostic and which therefore find applicability across all Retail Products offered by Regulated Persons, (covered by the Section titled General Rules), this Chapter also covers other dedicated sections which are solely applicable to the provision of specific products, and which have been largely inspired by legislative and regulatory efforts at European level. This applies to Consumer Credit Agreements, particularly those related to Immovable Property, as well as the provision of Payment Accounts and Deposit Accounts.

## Applicability

The following provisions are in accordance with the scope and applicability laid down in the [Consumer Credit Regulations](#) (S.L. 378.12).<sup>4</sup>

With respect to Rules and relevant Guidance in this Chapter which apply specifically to Consumer Credit Agreements, any such agreement qualifying as an **Overdraft Facility where the credit has to be paid on demand or within three months**, shall not be subject to the following rules and guidelines: R.1.3.116, R.1.3.119 to R.1.3.125, R.1.3.139, R.1.3.140, R.1.3.145, R.1.3.146 and R.1.3.149 to R.1.3.152.

With respect to Consumer Credit Agreements qualifying as **Overrunning**, the following rules and guidelines under this Chapter shall not apply: R.1.3.116 to R.1.3.146, R.1.3.148 and R.1.3.149.

With respect to Consumer Credit Agreements qualifying as **open-ended Credit Agreements entered into before 1<sup>st</sup> October 2010**, the following rules and guidelines under this Chapter shall not apply: R.1.3.116 to R.1.3.144, R.1.3.149 and R.1.3.150.

With respect to Consumer Credit Agreements qualifying as **Credit Agreements which provide for arrangements to be agreed by the Regulated Person and the Client in respect of deferred payments or repayment methods, where the Client is already in default on the initial Credit Agreement and where:**

- a. such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and
- b. the Client would not thereby be subject to terms less favourable than those laid down in the initial Credit Agreement,

the following rules and guidelines under this Chapter shall not apply: R.1.3.116, R.1.3.119, R.1.3.120, R.1.3.121(g), (j) to (l), (n) to (u), R.1.3.122 to R.1.3.125, R.1.3.139, R.1.3.140, R.1.3.142(e) to (m), R.1.3.144, R.1.3.148 and R.1.3.149.

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<sup>4</sup> As stated in the Consultation Document, the MFSA supervision and powers will be expressly formalised through the issue (in due course) of relevant Maltese Subsidiary Legislation, as deemed necessary for the MFSA to assume the relevant supervisory remit. Therefore, for the purposes of Credit Institutions, this reference will (be substituted with a reference to Maltese subsidiary legislation to be issued under the Banking Act (Chapter 371 of the Laws of Malta).

# Section 1: General Rules

## 1.1 General Requirements

- R1.1.1 Regulated Persons shall follow the Rules and Guidelines included in this Chapter in addition to, and without prejudice to, the requirements of:
- a. [Central Bank of Malta Directive 1 in terms of the Central Bank of Malta Act \(Cap. 204\)](#); and
  - b. [Distance Selling \(Retail Financial Services\) Regulations \(Legal Notice 36 of 2005\)](#).
- R.1.1.2 Where, in terms of this Rulebook, Information is required to be disclosed to Clients in a Durable Medium, it shall be disclosed:
- a. on paper;
  - b. in a clear and accurate manner, comprehensible to the Client, in such a way that Clients are reasonably able to understand the nature and risks of the Retail Product and/or Service provided;
  - c. in one of the official languages of Malta, or in any other language agreed by the parties; and
  - d. free of charge.
- R.1.1.3 Notwithstanding R.1.1.2(a), the Regulated Person may disclose to the Client any Information it is required to disclose in terms of this Rulebook in any one of the following means:
- a. through a Durable Medium other than paper, where the conditions laid down in R.1.1.4 are met; or
  - b. by means of a website where the conditions laid down in R.1.1.17 are met.
- R.1.1.4 Where Information is required to be disclosed in a Durable Medium, Regulated Persons shall have the right to provide that Information in a Durable Medium other than on paper, only if:
- a. the provision of that Information in that medium is appropriate to the context in which the business between the Regulated Person and the Client is, or is to be, carried on; and
  - b. the person to whom the Information is to be disclosed, when offered the choice between Information on paper or in that other Durable Medium, specifically chooses the provision of the Information in that other medium by way of an optional opt-in to receive Information in that Durable Medium other than paper.

- R.1.1.5 Where the Information to be disclosed in a Durable Medium, is disclosed by the Regulated Person using a Durable Medium other than paper or by means of a website, a paper copy shall be provided to the Client upon request and free of charge.
- R.1.1.6 The Regulated Person shall also ensure that any Information provided pursuant to R.1.1.2 shall be up to date.
- R.1.1.7 The Regulated Person shall ensure that in cases where Information is provided to the Client in both Maltese and English and a conflict arises between both versions, the wording of the English version shall prevail.
- Information disclosed in conjunction to Credit Agreements – whether relating to residential immovable property or otherwise – should be disclosed to Clients in plain English language and, if requested by the Client, in Maltese or in any other language agreed upon by the Client and the Regulated Person, and with any deemed technical terms being explained therein, in order for it to be clear and non-misleading to Clients.
- R.1.1.8 When Information is required to be disclosed on a pre-contractual basis, Regulated Persons must ensure that such disclosures are made in good time before Clients are bound by a contract, so as to provide them with the opportunity and ability to act on the Information.
- G.1.1.1 In doing so, Regulated Persons should consider the importance of the Information to the Client's decision-making process and the time at which the Information may be most useful.*
- G.1.1.2 When providing such Information through digital means, Regulated Persons should avoid applying a pre-ticked box approach as a means to obtain evidence of the Client's understanding and consent.*
- G.1.1.3 It is considered good practice for Regulated Persons to use boxes, pop-ups, simulations and similar means for the purpose of drawing the Client's attention and to increase their understanding of product risks.*
- R.1.1.9 Regulated Persons should refrain from using pre-ticked boxes through which the Client is, by default, being opted into buying additional or Ancillary Retail Products or Services. Where such Retail Products or Services are offered during the contracting process, these should be clearly framed and presented separately from the Information about the main underlying Retail Product. Instead, Regulated Persons should ensure that Clients exercise active and informed consent.

- R.1.1.10 The existence of a right to cancel a contract and withdraw from a Retail Product or Service shall not impact what information a Client should be provided with in order to enable him to make an informed purchasing decision.

## 1.2 Information about Banking Services

- R1.1.11 The Regulated Person shall publish information about the days on which and the times at which a Client may visit any of the Branches located in the Maltese Islands or make use of the different methods of banking services made available to the Client.
- R.1.1.12 The Regulated Person must make such information available to the Client upon request in a Durable Medium and free of charge. This information must also be made available and kept up to date at all times on the Regulated Person's website.
- R.1.1.13 Pursuant to R.1.1.11, different methods of banking services that may be made available to Clients include, but is not limited to:
- a. Mobile Banking;
  - b. Internet Banking; and
  - c. Telephone Banking.
- R.1.1.14 The Regulated Person shall make available by means of an instructions document, information on how Clients can apply for, make use of, or discontinuing their use of the different banking facilities mentioned in R.1.1.13.

Among other things, such instructions document must include:

- a. indicating whether or not it is possible, 24 hours a day and every day of the year, for a Client to make use of certain features of Mobile Banking or Internet Banking;
- b. indicating whether or not 24-hour help is available for Clients to raise queries about carrying out certain actions, where possible or relevant, on their Retail Product;
- c. where 24-hour help is not available under one or more of the banking facilities specified under R.1.1.13, information about how and when Clients can raise queries about carrying out certain actions, where possible or relevant, on their Retail Product and any other matters;
- d. contact details of the Regulated Person for each method of banking services – for example: the telephone number for the relevant

- helplines for Telephone Banking, the website address for Internet Banking, or the name of the application for Mobile Banking or a link to the place where the Client can download it; and
- e. information on the security safeguards that are in place and the Regulated Person's operational and security resilience, including but not limited to the procedures in place in case of suspicion of fraud and/or unauthorised activity, and relevant statements in relation to the protection of Client's personal data and handling thereof in compliance with the [General Data Protection Regulation \(EU\) 2016/679](#) and instructions on how to contact the Data Protection Officer in case of any potential or identified breaches.

### 1.3 Disclosure of Information on Regulated Persons

- R.1.1.15 A Regulated Person shall in good time, prior to the conclusion of any contract, or if there is a material change after the conclusion of a contract for the provision of a Service or Product, make the following disclosures to Clients:
- a. its name and address and the Retail Product or Service which is being provided or carried out which, shall include the address of the head office of the Regulated Person (including where applicable, the name of the Member State or Third Country where such head office is situated) and, where appropriate, the address of the agent or Branch concluding the contract (including where applicable, the name of the Member State or Third Country where such Branch is situated);
  - b. a statement of the fact that the Regulated Person is licensed by the MFSA, together with the address of the MFSA. Where applicable, a Regulated Person shall also disclose to the Client the Register in which the Regulated Person has been included and the means for verifying that it has been registered or notified;
  - c. information relating to the procedures allowing Clients or other interested persons to register complaints about the Regulated Person;
  - d. information related to any deposit guarantee scheme, including the Deposit Compensation Scheme, which the Regulated Person is obliged to provide in terms of the [Depositor Compensation Scheme Regulations \(S.L. 371.09\)](#);
  - e. the languages in which the Client may communicate with the Regulated Person, and receive documents and other Information from the Regulated Person;

- f. where the Regulated Person is acting through a Credit Intermediary, a statement of this fact; and
- g. at the request of the Client, further details of the Conflicts of Interest Policy in a Durable Medium or by means of a website (where that does not constitute a Durable Medium).

R.1.1.16 A Regulated Person which decides to appoint a Credit Intermediary shall ensure that, when contacting or before dealing with any Client, such Credit Intermediary discloses the capacity in which it is acting and the Regulated Persons which it is representing.

## 1.4 Regulated Persons carrying on a Service through Digital Communication

R.1.1.17 Where, in terms of this Rulebook, a Regulated Person is permitted to disclose Information to a Client by means of a website, and where that Information is not addressed personally to the Client, 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 Regulated Person and the Client is, or is to be, carried on;
- b. the Client shall be notified electronically of the address of the website, and the place on the website where the Information may be accessed;
- c. Legal Information should be provided in clear and understandable language and technical jargon should be avoided, whenever possible;
- d. Unrelated material which may diminish the communication of key messages to Clients should be avoided;
- e. the Information must be up to date and displayed prominently;
- f. the Information should be presented in plain and intelligible language and in a readable font size, which should easily adapt to work on any kind of device;
- g. the Information must be concise and presented in a clear and understandable format; and
- h. the Information must be accessible continuously by means of that website for such period of time as the Client may reasonably need to inspect it.

R.1.1.18 The internet website, shall, as a minimum, include the following Information:



- a. the name, address and contact details of the Regulated Person;
- b. a statement that such Regulated Person is authorised to carry on the Service;
- c. a list of the jurisdictions in which such Regulated Person is authorised or to carry on the Service. The term “authorised” includes a Regulated Person establishing a Branch or providing Services in a Member State or an EEA State in terms of the [European Passport Rights for Credit Institutions Regulations \(S.L.371.11\)](#);
- d. procedures for the submission of complaints and a description of the complaints handling procedure of the Regulated Person;
- e. contact details of the officer of the Regulated Person 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 \(Cap. 555\)](#) if the complainant is not satisfied with the manner in which his complaint has been resolved by the Regulated Person;
- f. a hyperlink to a comprehensive document covering the tariff of charges for Retail Products offered by the Regulated Person and any other tariff of charges by the Regulated Person which might not be directly linked to a Retail Product. Such a hyperlink must be accessible at all times and placed in a prominent position in the website’s homepage;
- g. an up-to-date publication of all interest rates applicable for the Retail Products or Services offered by the Regulated Person, which must be updated as soon as any interest rate change comes into effect;
- h. the list of Branches pertaining to that Regulated Person present in any location of the Maltese Islands, including their postal address, main contact number and respective opening hours;
- i. information, including general usage instructions and any associated fees and charges thereto, on the possibility for Clients to make use of additional banking facilities, including but not limited to:
  - i. Mobile Banking;
  - ii. Telephone Banking;
  - iii. Internet Banking.

R.1.1.19 For the purposes of R.1.1.4 and R.1.1.17, the provision of Information by means of electronic communications shall be treated as appropriate to the context in which the business between the Regulated Person and the Client is, or is to be, carried on if there is evidence that the Client has regular access to the internet. The provision by the Client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

R.1.1.20 The use of digital means of communications should not result in the disclosure of Information that is overly restrictive and, hence, unclear, ambiguous or misleading.

*G.1.1.4 It is considered good practice that Regulated Persons monitor the design and prominence of relevant disclosures by analysing Client behaviour, for example by gathering feedback from Clients, monitoring their activities and following up on complaints to ensure their effectiveness in the commercialisation of Retail Products and Services through digital means. Regulated Persons should take the results of the monitoring into account to decide on potential changes required.*

R.1.1.21 Information shall be considered as being presented prominently if, having regards to the content it is presented alongside, it is likely that the attention of the average Client would be drawn to it.

When providing information electronically, information is likely to be presented prominently as long as it consists of sufficient information that is not solely dependent on having the Client access a separate webpage or providing him with the option to download and open a separate file containing it.

R.1.1.22 Regulated Persons should periodically review material disclosed to Clients (both on a pre-contractual and post-contractual basis) so as to ensure that its content and format are still fit for purpose and kept simple and easy to understand.

R.1.1.23 Where in the course of carrying out a Service, a Regulated Person carries on such Service through the internet, the internet site shall satisfy the conditions indicated in R.1.1.24 which the Regulated Person is required to comply with when operating such site and should, as a minimum, include the Information indicated under R.1.1.25.

R.1.1.24 Where the Service is carried on through the internet, the following conditions shall be satisfied at all times:

- a. the Regulated Person assumes full responsibility for all Information that is communicated or displayed on the internet site and of the overall quality of any such Information communicated or displayed thereon;
- b. the Regulated Person shall designate a senior officer to act as a main point of contact with the MFSA in respect of the said site. The designated person and any change of the designated person shall be immediately communicated to the MFSA;

- c. the Regulated Person shall ensure that all data and Information explained on the internet site is complete and constantly updated;
- d. the Regulated Person 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; and
- e. the Regulated Person includes appropriate statements the Client or prospective Client is leaving the internet site and accessing another in cases where the internet site of the Regulated Person is hyperlinked to other sites.

R.1.1.25 When access to relevant Information is provided through a hyperlink, it is considered good practice that Regulated Persons ensure that hyperlinks are:

- a. not used in a way that misleads Clients away from the relevant Information, for example, by fragmenting the Information provided into separate pieces in different locations;
- b. noticeable and presented consistently, for example regarding style, prominence, positioning, etc., to ensure that Clients can navigate easily through the additional Information available;
- c. labelled appropriately to convey the importance, nature, and relevance of the Information they refer the Client to;
- d. referring Clients directly to the relevant Information on the click-through page; and
- e. periodically tested by the providers for proper functioning.

*G.1.1.5 It is considered good practice that Regulated Persons assess the effectiveness of the hyperlinks by monitoring clickthrough rates and related Client behaviour, and make changes accordingly as required.*

R.1.1.26 Pursuant to R.1.1.18(g), when a Regulated Person publishes a change in interest rates, the notice must be displayed on the Regulated Person's website stating the old rate and the new rate and the date from when the changes will apply.

R.1.1.27 Where the length of the Information is such that cannot be shown within the display area in its entirety, leading to the implementation of a scrolling mechanism to view different parts of the document, Regulated Persons should ensure that Clients cannot conclude the contract before scrolling down the entire Information to the very end.

R.1.1.28 Where a Regulated Person communicates with a Client 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 Client by

means of its website, including dated logs of such disclosures, in order to demonstrate that it has complied with all its regulatory requirements.

## 1.5 Disclosures on the Retail Products provided by the Regulated Person

R.1.1.29 A Regulated Person shall ensure that all Information it addresses to, or disseminates to Clients, including marketing communications, satisfies the conditions laid down in R.1.1.30, R.2.1.13 and R.2.1.37.

R.1.1.30 A Regulated Person shall ensure that the Information referred to in R.1.1.29 complies with the following conditions:

- a. the Information includes the name of the Regulated Person;
- b. the Information is accurate and always gives a fair and prominent indication of any relevant conditions when referencing any potential benefits of a Retail Product or Service;
- 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 whom it is directed to, 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 Client, unless the Client 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.

*G.1.1.6 The Information to be disclosed to the Client may vary according to a number of considerations, such as the Information needs of a reasonable recipient having regard to the type of Retail Product or Service that is proposed or provided and its overall complexity, main benefits, risks, limitations, conditions and duration, as well as whether the same Information has been provided to the Client previously and, if so, when that was.*

*G.1.1.7 Pursuant to G.1.1.6, Regulated Persons are expected to make available to Clients clear and general information and guidance on the Retail Products it offers. In particular, in the context of Credit Agreements related to immovable property, Regulated Persons need to ensure that the information provided covers the credit granting process in order to guide Clients, including necessary information requested for Clients seeking to take out a Credit Agreement relating to Residential Immovable Property for the first time.*

- R.1.1.31 A Regulated Person must provide each Client with the appropriate information in good time before the Client is bound by the contract for the Retail Product or Service. As a minimum, this shall include:
- a. The contractual terms and conditions of the Retail Product, with reference to:
    - i. any changes to such terms and conditions,
    - ii. the duration of the contract,
    - iii. any rights and agreements relating to the termination of the contract, and
    - iv. any consequences of breaching any of the contractual terms and conditions;
  - b. The key features of the Retail Product or Service, as well as a general description and nature of the prevalent conditions associated with such product or service;
  - c. The different Retail Products or Services offered by the Regulated Person which share the main features of the product or service which the Client has enquired about, or which have common features the Client has expressed an interest in, unless the Client has expressly indicated that he does not wish to receive that information;
  - d. The applicable rate or rates of interest, how and when such interest is calculated and applied and any changes to that rate or those rates;
  - e. Where applicable, any exchange rates to be applied or, if reference exchange rates are to be used, the relevant date and index or base for determining such reference exchange rate;
  - f. Any direct or indirect fees or charges payable at any time by or on behalf of a Client in relation to each Retail Product or Service and any changes to those charges;
  - g. Information about communication channels, including the technical requirements for the Client's equipment and software agreed between the parties for the transmission of Information or notifications under this Rulebook; the manner and frequency with which information under this Rulebook is to be provided or made available; the language or languages in which the framework contract will be concluded and communicated during this contractual relationship undertaken;

- h. The time at which any funds placed with or transferred to the Regulated Person for credit to the Client's account/s will be made available to such Client;
- i. The Client's right to cancel a contract for a Retail Product or Service, subject to the terms and conditions associated with the Retail Product or Service in question;
- j. The manner in which the Client may lodge a complaint and any other contractual clauses on the law applicable to the contract and/or competent court which may impact the Client's recourse to redress;
- k. Where the client requests for the opening and access of a Payment and/or Deposit Account Information related to such account, should the Client meet the Regulated Person's eligibility criteria for such account.

- R.1.1.32 The contractual terms and conditions referenced in R.1.1.31(a) shall:
- a. Provide a fair and balanced description of the relationship between the Client and the Regulated Person;
  - b. Highlight the Client's liabilities and obligations when using the Retail Product;
  - c. Be consistently reviewed to ensure their continued compliance within this Rulebook and other applicable legislation and regulations; and
  - d. Be provided to the Client in advance.

Moreover, Regulated Persons should advise Clients to read and understand the terms and conditions when applying for Retail Products or Services and should allow Clients reasonable opportunity to review the terms and conditions before the applications.

- G.1.1.8 *Pursuant to R.1.1.31, the Regulated Person must be willing to provide the Client with verbal explanations of any Information relating to the Retail Product, including but not limited to:*
- a. *aspects on the delivery of Service thereof, irrespective of whether included in the terms and conditions or any other Marketing material, or*
  - b. *any other questions that the Client might have about the Regulated Person itself, as long as it is not construed to be a violation of any other applicable law or regulation.*

- R.1.1.33 The Regulated Person shall explain to the Client his duty to disclose all circumstances material to the Retail Product or Service being provided and the consequences of any failure to make such a disclosure, both before the Retail Product or Service is provided and throughout the

duration of the Service provided. The Regulated Person shall also take account of the Information the Client discloses.

- R.1.1.34 In the completion of an application form, product form, or any other material document, as applicable, the Regulated Person shall make it clear that all the answers or statements obtained from the Client are the Client's own responsibility. The Client should always be requested to check the details.
- R.1.1.35 If a Regulated Person's initial contact with a Client with a view to providing a Retail Product or Service is by telephone, then the following Information should be provided before proceeding further:
- a. the name of the Regulated Person and, if the call is initiated by or on behalf of a Regulated Person, the commercial purpose of the call;
  - b. that the services/products mentioned in the call are subject to fees and charges, where this is the case; and
  - c. that the Information given under (a) or (b) will subsequently be confirmed in a Durable Medium in case the Client is interested to proceed further.
- R.1.1.36 In cases where Regulated Persons make initial contact with a Client on the telephone, a Regulated Person shall in addition take into account and comply with the requirements of [Distance Selling \(Retail Financial Services\) Regulations \(Legal Notice 36 of 2005\)](#), where these are applicable. If the Client has chosen to obtain Information given prior to the conclusion of the contract on Durable medium other than paper in accordance with R.1.1.5, Information shall be provided by the Regulated Person to the Client in accordance with R.1.1.2 and R.1.1.4 in good time and prior to the Client being bound by a Distance Contract or offer.
- R.1.1.37 Where the Regulated Person proposes to exercise a power to make:
- a. a change to any term or condition of the agreement;
  - b. a change to any charge or fee; or
  - c. a change to any rate of interest
- that applies to the Retail Product or Service and that will be to the disadvantage of the Client, the Regulated Person should provide reasonable notice to the Client on paper or in another Durable Medium before the change takes effect, taking into account any period of notice required by the Client to terminate the contract in question.

Without prejudice to R.5.8.201, in case of a change in the Regulated Person's base rate which ultimately affects the final and effective borrowing rate, the notice period should be at least 60 days. Personalised information to Clients should include information about



any changes to the repayment amount or changes to the term of the credit facility.

- R.1.1.38 In addition to its obligations under R.1.1.37, Regulated Persons shall also provide reasonable notice to the Client on paper or in another Durable Medium before any material change:
- a. to its Mobile, Internet or Telephone Banking services insofar as this may impact the Client's utilisation or visibility of Retail Products or Services it is subscribed to;
  - b. to the manner in which a Client is able to access its account/s; and
  - c. in the manner and form in which a Client's account information is displayed.
- R.1.1.39 For the purposes of R.1.1.37 and R.1.1.38, Regulated Persons should ensure that the heading of the notice clearly indicates the main substance of the change to which the notification relates. The notice should also be provided in plain language, where appropriate and practical, and should reference the ways in which the Client may indicate their refusal and any potential consequences thereto.
- R.1.1.40 Where a Regulated Person notifies a Client of a change to a rate of interest that applies to a Retail Product that will be to the disadvantage of the Client, this notification should, where applicable:
- a. refer to the fact that the Regulated Person offers a comparable Retail Product or Service for which the Client is eligible, where this is the case;
  - b. indicate that the Client may move to that Retail Product or Service provided by another Regulated Person; and
  - c. indicate that the Regulated Person will assist the Client to move to another Retail Product or Service if he or she wishes to do so.
- R.1.1.41 Where a notice is provided by the Regulated Person more than 14 days before the change to which the notice relates takes effect, the Regulated Person should also provide a reminder to the Client within a period beginning 14 days before the relevant change takes effect and ending on the day before it does so. In doing so, the Regulated Person should make use of all possible communication channels, including where applicable banners on the Regulated Person's website, internet banking, prominent areas within branches and notices on ATM screens, among others. The Regulated Person should however also take account of any preferences expressed by the Client about the medium of communication, for example, if the Client has indicated a preference to receive information via a text message.



- R.1.1.42 Where, under a contract for a Retail Product or Service, an introductory, promotional or preferential rate of interest applies to the Retail Product until a specified future date or the end of a fixed period, a Regulated Person should provide notice of the expiry of the application of that rate of interest to the Client on paper or in another Durable Medium within a reasonable period before that rate of interest ceases to apply.
- R.1.1.43 A Regulated Person shall make available to Clients on paper or in another Durable Medium such regular statements as are appropriate to the type of Retail Product or Service being provided, unless:
- a. The Regulated Person has provided the Client with another document in a Durable Medium that records transactions in relation to that Retail Product;
  - b. The Client has elected not to receive periodic statements, and for so long as such election is in force; or
  - c. The Regulated Person has reasonable grounds to believe that the Client is no longer resident at the address which is last known to the Regulated Person and it is not practical, after reasonable inquiry, to ascertain the Client's current address.
- R.1.1.44 A Regulated Person shall provide Clients with a copy of any statement referenced under R.1.1.43 on paper or in another Durable Medium within a reasonable period of time following a request to that effect, or at least on a yearly basis if no such request is made.
- R.1.1.45 A Regulated Person shall not charge a fee for providing information in terms of R.1.1.43.
- G.1.1.9 Regulated Persons shall ensure that, amongst other considerations, the rate of applicable interest to the Retail Product in question is always indicated in each statement provided or made available to the Client.*

## 1.6 Disclosure of Applicable Costs and Charges

R.1.1.46 Regulated Persons shall, in good time prior to providing a Retail Product or a Service to a Client, disclose to such Client Information relating to all costs and associated charges related to the Retail Product or Service and its Distributor, which must include, where relevant, any third-party payments. The Regulated Person should also specify how the Client may pay such costs.

R.1.1.47 The Information referred to in R.1.1.46, including costs and charges in connection with the Retail Products and/or Services disclosed to the Client which are not caused by the occurrence of underlying market risk, shall be aggregated to allow the Client to understand the overall cost as well as the cumulative effect on the benefits reaped by the Client from the Retail Product.

Where the Client so requests, an itemised breakdown of such costs shall be disclosed. Where applicable, such Information shall be disclosed to the Client on a regular basis, at least annually, until the Retail Product matures or is redeemed by the Client.

R.1.1.48 Provided that where an agreement to buy a Retail Product or Service is concluded using a means of Distance Communication which prevents the prior delivery of the information on costs and charges, the Regulated Person may provide the information on costs and charges without undue delay after the conclusion of the transaction, provided that all of the following conditions are met:

- a. such information is provided by the Regulated Person either in electronic format or, where requested by a Retail Client, on paper;
- b. the Client has consented to receiving the information without undue delay after the conclusion of the transaction; and
- c. the Regulated Person has given the Client the option of delaying the conclusion of the transaction until the client has received the information.

R.1.1.49 In addition to the requirements set out in R.1.1.48, the Regulated Person shall be required to provide the Client with another option, that is, the option of receiving the Information on costs and charges over the phone prior to the conclusion of the transaction.

*G.1.1.10 In good time prior to providing a Retail Product or Service to a Client, a Regulated Person should provide the Client on a Durable medium, a breakdown of all charges, including any third-party charges, which will*

*be passed on to the Client and, where such charges cannot be ascertained in advance, notify the Client that such charges will be levied as part of the transaction.*

*G.1.1.11 A Regulated Person is recommended to display in its public offices, in a manner that is easily accessible to Clients, a schedule of fees and charges imposed by that Regulated Person. If the Regulated Person has a website, it should also include in it its schedule of fees and charges.*

## 1.7 Disclosure of Information on Tied and/or Bundled Packaged Products

R.1.1.50 When a Service is offered together with another Retail Product or Service as part of a Bundled Package or as a condition for the same agreement or package, the Regulated Person shall inform the Client whether it is possible to buy the different components separately and, in such case, shall provide an adequate description of the different components of the agreement or package as well as separate evidence of the costs and charges of each component.

R.1.1.51 Where the conditions resulting from such an agreement or package offered to a Retail Client are likely to be different from the risks associated with the components taken separately, the Regulated Person shall provide an adequate description of the different components of the agreement or package and the way in which its interaction modifies the conditions.

R.1.1.52 Regulated Persons which distribute a Bundled Package must design their purchase options in a way which enables Clients to actively select a purchase and therefore to make a conscious decision to buy the Component product or the Bundled Package. Regulated Persons must not use pre-ticked boxes (online or in any other sales document) when they cross-sell one Retail Product or Service with another.

R.1.1.53 Regulated Persons which distribute a Bundled Package must present their purchase options in a way which avoids giving a false perception that the purchase of the Bundled Package is compulsory when in fact it is an optional purchase.

R.1.1.54 Regulated Persons which distribute a Tied or Bundled Package must make available in good time before the Client is bound to the agreement, Information on the price of both the Bundled Package and of each of its Component products, allowing the Client to make an informed decision.

- R.1.1.55 Regulated Persons which distribute a Tied or Bundled Package must provide Clients with a clear breakdown and aggregation of all relevant known costs associated with the purchase of the Bundled Package and its Component products (such as administration fees, transaction costs, and exit or pre-payment penalty charges). Where costs cannot be calculated with precision on an ex-ante basis but nevertheless will be incurred by Clients after the purchase of the Bundled Package, the Regulated Person must provide an estimation of these costs based on reasonable assumptions.
- R.1.1.56 Regulated Persons which distribute a Tied or Bundled Package must ensure that the price on cost information of the Bundled Package and its Component products is communicated to Clients in a prominent, accurate manner and in simple language, with any technical terminology explained.
- R.1.1.57 Regulated Persons which distribute a Tied or Bundled Package must ensure that when promoting any of the Component products that will form a Bundled or Tied Package, equal prominence is assigned to the price and cost information of these individual Component products so that a Client can properly and quickly discern the cost impact upon them as a result of purchasing both as a package and individually.
- G.1.1.12 In any marketing communications used by the Regulated Person, the font used to communicate the relevant price and cost information of each of the Component products intended to be sold as a Bundled Package is the same. Relevant information concerning one of the Component products is not given more emphasis with the use of a bigger or bolder font.*
- G.1.1.13 Where the sale takes place on the internet or through another channel without a sales person directly involved, the price and cost information of both Component products that will form the Bundled Package appears early-on in the relevant webpages and is easily navigated by Clients i.e. the price and cost information of any Component product which will form part of the Bundled Package is not placed or 'hidden' further down in the Regulated Person's online sales form.*
- R.1.1.58 Regulated Persons which distribute the Tied or Bundled Package must ensure that the price and cost information is presented to Clients in a way which is not misleading or which distorts or obscures the real cost to the Client or prevents meaningful comparison with alternative Retail Products.

R.1.1.59 Regulated Persons which distribute the Tied or Bundled Package must ensure that Clients are provided with key Information relating to the non-price features and risks where applicable, of each of the Component products and the Package, including in particular the information on how the risks are modified as a result of purchasing the Bundled Package rather than each of the components separately.

R.1.1.60 Regulated Persons which distribute the Tied or Bundled Package must ensure that key non-price factors and the relevant risks are promoted to Clients with the same prominence and weight as information on price and cost of the Component products or Tied or Bundled Package. These must be made clear to Clients in simple language, with any technical terminology explained, in good time before the Client is bound to the agreement.

R.1.1.61 Regulated Persons which distribute the Tied or Bundled Package must ensure that information on the non-price features and risks of the package is presented to Clients in a way which is not misleading or which distorts the impact of these factors for the Client.

*G.1.1.14 A Regulated Person should draw the Client's attention to the limitations and risks of the Tied or Bundled Package and the Component products and guides the Client through the relevant information which sets out the key benefits, limitations and risks of the Tied or Bundled Package and the Component products. The sales person should explain carefully and in due time (i.e. before the Client is bound to the agreement) how these non-price factors materially change according to:*

- a. whether the Component product is purchased and*
- b. which Component product is selected.*

*The Regulated Person should alert the Client of the Tied Package to the overall benefits, limitations and risks of the Tied or Bundled Package.*

*G.1.1.15 A Regulated Person should refrain from exclusively relying on a general reference to their Terms & Conditions to alert or disclose key non-price Information to Clients. Instead, the Regulated Person should explain the risks and non-price Information to the Client in plain language.*

## 1.8 Disclosure of Information provided at Branches upon Request

R.1.1.62 All Branches of a Regulated Person must have unrestricted access to any relevant sources of information about Retail Products provided by

the Regulated Person which would enable the Branch to satisfy a Client's request for information. This information needs to be kept up to date and coherent with the original source of information, provided free of charge and on a Durable Medium agreed by the Client.

All Branches of a Regulated Person should have unrestricted access to the information provided by the same Regulated Person in so far as to be able to satisfy any requests put forward by the Client in relation to any of the disclosure requirements set out in this Rulebook.

- R.1.1.63 Where electronic devices are used to present information in Branches or during face-to-face discussions between staff members of the Regulated Person and the Client, the Regulated Person should, upon request, provide Clients with alternative means to review the relevant information.
- R.1.1.64 The Regulated Person should take reasonable measures to enhance the access to its Services being provided in Branches, especially to its Vulnerable Clients.
- R.1.1.65 Regulated Persons shall, amongst others and upon request by Clients, provide in a Durable Medium and free of charge, the following:
- a. Details on each Retail Product available, with an overview of its main features and characteristics, benefits and risks;
  - b. The latest version of general tariff of charges and fee information for each specific Retail Product;
  - c. The current interest rates and exchange rates that are in force which would be applicable in conjunction with any of the Retail Products, where relevant;
  - d. General terms and conditions; and
  - e. Other educational consumer information which the Regulated Person may issue.

## 1.9 Disclosures of Conflicts of Interest

- R.1.1.66 Where organisational or administrative arrangements made by the Regulated Person to prevent conflicts of interest from adversely affecting the interest of its Client are not sufficient to ensure, with reasonable confidence, that risks of damage to Client interests will be prevented, the Regulated Person shall clearly disclose to the Client 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 to enable that Client to take an informed decision with respect to the Retail Product or Service in the context of which the conflict of interest arises.

R.1.1.67 Regulated Persons shall ensure that disclosure to Clients pursuant to R.1.1.66 above, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the Regulated Person to prevent or manage its conflicts of interests, in accordance with R.4.2.19 are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the Client will be prevented.

R.1.1.68 When disclosure of specific conflicts of interests is required, the disclosure shall clearly state that the organisational and administrative arrangements established by the Regulated Person to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence that the risk of damage to the interest of the Client will be prevented. The disclosure to Clients 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 Retail Product, Services and/or Ancillary Services. That description must explain the general nature and sources of conflicts of interest, as well as the risks to the Client that arise as a result of the conflict and the steps undertaken to mitigate these risks, in sufficient detail to enable that Client to make an informed decision with respect to the Retail Product, Service or Ancillary Service in the context of which the conflicts of interest arise.

*G.1.1.16 Regulated Persons have a duty to take effective steps to identify, and prevent or manage conflicts of interest between themselves, including their managers, employees and any Credit Intermediaries, or any person indirectly linked to them by control and their Clients or between one Client and another and mitigate the potential impact of these risks as far as possible. When some residual risk of detriment to the Client's interests nonetheless remains, clear disclosure to the Client of the general nature and sources of conflicts of interest to the Client and the steps taken to mitigate these risks shall be made before undertaking business on its behalf.*

*G.1.1.17 Where conflicts of interest arise and cannot be reasonably avoided, Regulated Persons shall disclose the general nature and source of the*



*conflicts of interest to the Client and shall ensure that any conflict does not result in damage to the interests of the Client.*

*G.1.1.18 The disclosure of conflicts of interest by a Regulated Person should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements relating to the prevention of conflicts of interest. While disclosure of specific conflicts of interest is required by R.1.1.66, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.*

R.1.1.69 Regulated Persons who charge a fee and also receive commission where Credit Intermediaries are involved in respect of the Product or Service provided to the Client, such Regulated Person shall disclose to the Client, in good time, prior to the provision of a Retail Product or Service, whether or not the commission will be offset against the fee, either in full or in part.

R.1.1.70 A Regulated Person shall also be required to disclose at any time that the Client requests it, further details of the Conflicts of Interest Policy in a Durable Medium or by means of a website.

R.1.1.71 A Regulated Person shall, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant Services or Ancillary service, clearly disclose to the Client the existence, nature and amount of any payment or benefit designed to enhance the quality of the relevant Service to the Client, as defined in R.4.1.7 or, where the amount cannot be ascertained, the method of calculating that amount. Minor non-monetary benefits may be described in a generic way. Other non-monetary benefits received or paid to the Regulated Person in connection with the Service provided to a Client shall be priced and disclosed separately.

## Section 2: Disclosure Requirements for Clients entering into Credit Agreements relating to Residential Immovable Property



## 2.1 Applicability

R.1.2.72 In addition to the applicability of Section 1 of this Chapter, the Rules and Guidance under this Section shall solely apply to Credit Agreements relating to Residential Immovable Property as set out in the Glossary of Definitions to this Rulebook. The term Credit Agreements within this Section shall therefore be construed as a reference to Credit Agreements relating to Residential Immovable Property.

## 2.2 General Requirements

R.1.2.73 Regulated Persons, including Credit Intermediaries, shall always act in the best interest of Clients when disclosing information of any nature.

R.1.2.74 Regulated Persons, including Credit Intermediaries, shall take all necessary steps to ensure full compliance with these regulations.

R.1.2.75 Without prejudice to R.1.2.74, a Credit Intermediary shall:

- a. indicate in documentation intended for Clients, the extent of its powers, in particular whether it is a Tied Credit Intermediary, and in such case, whether it acts on behalf of and under the full and unconditional responsibility of only one Regulated Person, only one group, or a number of Regulated Persons or groups which does not represent the majority of the market;
- b. disclose the fee, if any, payable by the Client for its services, which fee shall be agreed in writing or on a Durable Medium between the Client and the Credit Intermediary before the conclusion of the Credit Agreement; and
- c. disclose the fee, if any, payable by the Client to the Credit Intermediary for its services to the Regulated Person for the purpose of calculating the Annual Percentage Rate of Charge (APRC).

R.1.2.76 The APRC shall be calculated in accordance with the mathematical formula set out in Annex I to this Chapter.

R.1.2.77 The costs of opening and maintaining a specific account, of using a means of payment for both transactions and drawdowns on that account and of other costs relating to payment transactions shall be included in the total cost of credit to the Client whenever the opening or

maintaining of an account is obligatory in order to obtain the credit or to obtain it on the terms and conditions marketed.

R.1.2.78 The calculation of the APRC shall be based on the assumption that the Credit Agreement is to remain valid for the period agreed and that the Regulated Person and the Client will fulfil their obligations under the terms and by the dates specified in the Credit Agreement.

It is also to be noted also that an [APRC simulator](#) was published by the European Commission to assist users to calculate the APRC of a given credit. The simulator tool contains an option to select the type of credit and is accompanied by a report presenting examples and instructions on how to use the said tool.

R.1.2.79 In the case of credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, in the charges contained in the APRC but unquantifiable at the time of calculation, the APRC shall be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the level set at the conclusion of the contract.

R.1.2.80 For Credit Agreements for which a fixed borrowing rate is agreed in relation to the initial period of at least five years, at the end of which a negotiation on the borrowing rate takes place to agree on a new fixed rate for a further material period, the calculation of the additional, illustrative APRC disclosed in the ESIS (as set out in Annex II to this Chapter) shall cover only the initial fixed rate period and shall be based on the assumption that, at the end of the fixed borrowing rate period, the capital outstanding is repaid.

R.1.2.81 Where applicable, the additional assumptions set out in Annex I shall be used in calculating the APRC.

R.1.2.82 When Information is provided to Clients in compliance with the requirements set out in this Section, such Information shall be provided without charge to the Client.

R.1.2.83 Such Information, among other things, should include a comprehensive explanation of the application process to be undertaken by the Client should they wish to proceed with entering into a Credit Agreement relating to Residential Immovable Property.

This should include a list of any documents or information that could be required from the Client at varying stages of the process (including those required at the outset), and outlining the relevance of different milestones along the application process, for example issuing a sanction letter whereby the Regulated Person is confirming its intent to provide credit to the Client based on the terms and conditions of the Credit Agreement.

## 2.3 Pre-Contractual Information and Practices preliminary to the conclusion of the Credit Agreement

R.1.2.84 The Regulated Person and, where applicable, the Credit Intermediary, shall provide the Client with the personalised Information needed to:

- a. compare the credits available on the market,
- b. assess their implications, and
- c. make an informed decision on whether to conclude a Credit Agreement,

provided that the Information is to be provided to the Client:

- a. without undue delay after the Client has given the necessary Information on his needs, financial situation and preferences;
- b. in good time before the Client is bound by any Credit Agreement or offer; and
- c. on paper or on another Durable Medium.

R.1.2.85 The personalised Information referred to in R.1.2.84 shall be provided by means of the ESIS, as set out in Annex II to this Chapter. This shall not be modified:

Provided that where the Regulated Person or, where applicable, the Credit Intermediary, wishes to provide to the Client any additional information, and, or where the Regulated Person, or where applicable the Credit Intermediary, is required to provide to the Client any additional information, such additional information shall be given in a separate document which may be annexed to the ESIS.

R.1.2.86 Regulated Persons and, where applicable, Credit Intermediaries, shall provide the ESIS to the Client before the provision of an offer binding on the Regulated Person:

Provided that when an offer binding on the Regulated Person is provided to the Client, it shall be provided on paper or on another Durable Medium and, where characteristics of the offer are different from the Information contained in the ESIS previously provided in accordance with this sub-regulation, it shall be accompanied by an updated ESIS.

R.1.2.87 The Client shall be entitled to a full seven (7) day period, in order to ensure that sufficient time to compare offers, assess their implications and make an informed decision, is allowed to the Client:

Provided that the time period referred to in this Rule shall be a reflection period before the conclusion of the Credit Agreement:

Provided further that the reflection period specified in this Rule shall:

- a. be binding on the Regulated Person for the duration of the reflection period; and
- b. allow that the Client may accept the offer at any time during the reflection period.

R.1.2.88 When the Credit Agreement is being entered into on a Distance Contract basis, the Regulated Person and, where applicable, the Credit Intermediary who has supplied the ESIS to the Client shall be deemed to have fulfilled the requirements regarding Information provision to the Client prior to the conclusion of a Distance Contract as laid down in the [Distance Selling \(Retail Financial Services\) Regulations \(Legal Notice 36 of 2005\)](#).

R.1.2.89 In case of voice telephony communications, the description of the main characteristics of the financial service to be provided, shall include at least the items referred to in the ESIS within Sections 3 to 6 of Part A of Annex II.

R.1.2.90 The Regulated Person or, where applicable, the Credit Intermediary shall, at the time of the provision of an offer binding on the Regulated Person, provide the Client with a copy of the draft conditions to be eventually entered into the Credit Agreement.

R.1.2.91 Regulated Persons and, where applicable, Credit Intermediaries shall provide adequate explanations to the Client on the proposed Credit

Agreement and any Ancillary Services, in order to place the Client in a position enabling them to assess whether the proposed Credit Agreement and Ancillary Services are adapted to their needs and financial situation.

- R.1.2.92 The adequate explanations referred to in R.1.2.91 shall, where applicable, include in particular:
- a. an explanation of the Information and terms included in the pre-contractual Information to be provided in accordance with R.5.5.117 to R.5.5.125 in the case of Regulated Persons and R.5.5.117 to R.5.5.133 in the case of Credit Intermediaries;
  - b. the essential characteristics of the Credit Agreement proposed;
  - c. the specific effects the Credit Agreement proposed may have on the Client, including the consequences of default in payment by the Client; and
  - d. where Ancillary Services are bundled with a Credit Agreement, whether each component of the bundle can be terminated separately and the implications for the Client of doing so.

### 2.3.1 Content of Pre-Contractual Information

- R.1.2.93 Regulated Persons and, where applicable, Tied Credit Intermediaries shall make available clear and comprehensible general information about Credit Agreements at all times on paper or on another Durable Medium or in electronic form, and as much as possible, in a plain and intelligible language that can be easily understood by the Client.
- R.1.2.94 The general information referred to in R.1.2.93 shall include at least the following:
- a. the identity and the geographical address of the Regulated Person;
  - b. where applicable, the identity and geographical address of the Credit Intermediary involved;
  - c. the purposes for which the credit may be used;
  - d. the forms of security, including, where applicable, the possibility for it to be located in another different Member State;
  - e. a description of the types of Credit Agreements available, including a short description of the differences between fixed and variable rate products and the related implications for the Client;
  - f. a list of related cost elements, such as administrative costs, insurance costs, legal costs, and where applicable, the costs of intermediaries;

- g. an indication of the cost of a typical Credit Agreement for the Client;
- h. the possible duration of the Credit Agreement;
- i. an indication of the currency or currencies in which the credit falling within the scope of these Rules under this Section is available, including an explanation of the implications for the Client where the credit is denominated in a foreign currency;
- j. the types of available borrowing rates, the conditions governing the application of such rates and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions, and procedures for changing the borrowing rate, provided that if different rates apply in different circumstances, the above information shall be supplied in respect of all the applicable rates;
- k. an indicative example of the total amount of credit, the total cost of credit to the Client, the total amount payable by the Client and the APRC;
- l. an indication of possible further costs, not included in the total cost of the credit to the Client, to be paid in connection with a Credit Agreement;
- m. the range of different options available for reimbursing the credit to the creditor, including the number, frequency and amount of the regular repayment instalments;
- n. where applicable, a clear and concise statement that compliance with the terms and conditions of the Credit Agreement does not guarantee repayment of the total amount of credit under the Credit Agreement;
- o. a description of the conditions directly relating to early repayment;
- p. whether a valuation of the property is necessary and, where applicable, who is responsible for ensuring that the valuation is carried out, and whether any related costs arise for the Client;
- q. details on how to obtain information on tax relief on the Credit Agreement interest or other public subsidies;
- r. an indication of Ancillary Services the Client is obliged to acquire in order to obtain the credit 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 Client; and
- s. a general warning concerning possible consequences of non-compliance with the commitments linked to the Credit Agreement.

### 2.3.2 Disclosure requirements concerning Credit Intermediaries

- R.1.2.95 Credit Intermediaries shall, in good time before the carrying out of any of the credit intermediation activities in terms of the definition “Credit Intermediary”, provide the Client with at least the following information on paper or on another Durable Medium:
- a. the identity and the geographical address of the Credit Intermediary;
  - b. the register in which it has been included, the registration number, where applicable, and the means for verifying such registration;
  - c. whether the Credit Intermediary is tied to or works exclusively for one or more Regulated Person, provided that where the Credit Intermediary is tied to or works exclusively for one or more Regulated Person, it shall provide the names of the Regulated Persons for which it is acting; and provided further that where the Credit Intermediary meets the conditions laid down in accordance with R.1.2.102, it may disclose that it is independent;
  - d. whether the Credit Intermediary offers Advisory Services;
  - e. the fee, where applicable, payable by the Client to the Credit Intermediary for its services or, where this is not possible, the method for calculating the fee;
  - f. the procedures allowing Clients or other interested parties to register complaints internally about the Credit Intermediary and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought;
  - g. where applicable, the existence and, where known, the amount of commissions or other inducements, payable by the Regulated Person or third parties to the Credit Intermediary for its services in relation to the Credit Agreement, provided that where the amount is not known at the time of disclosure, the Credit Intermediary shall inform the Client that the actual amount will be disclosed at a later stage in the ESIS.
- R.1.2.96 Credit Intermediaries which are not tied but which receive commission from one or more Regulated Persons shall, at the Client’s request, provide information on the variation in levels of commission payable by the different Regulated Persons providing the Credit Agreements being offered to the Client. Credit Intermediaries shall also inform Clients that they have the right to request such information.
- R.1.2.97 Where a Credit Intermediary charges a fee to the Client and additionally receives commission from the Regulated Person or a third party, the Credit Intermediary shall explain to the Client whether or not the commission will be offset against the fee, either in part or in full.



- R.1.2.98 Credit Intermediaries shall communicate to the Regulated Person the fee, if any, payable by the Client to the Credit Intermediary for its services, for the purpose of calculating the APRC.

### 2.3.3 Disclosures by Regulated Persons and Credit Intermediaries for Advisory Services

- R.1.2.99 The Regulated Person or Credit Intermediary shall explicitly inform the Client, in the context of a given transaction, whether Advisory Services are being or can be provided to the Client.
- R.1.2.100 Before the provision of Advisory Services or, where applicable, the conclusion of a contract for the provision of Advisory Services, the Regulated Person or Credit Intermediary shall provide the Client with the following Information on paper or another Durable Medium:
- a. whether the recommendation will be based on considering only their own product range in accordance with R.1.2.101(b) or a wide range of products from across the market in accordance with R.1.2.101(c) so that the consumer can understand the basis on which the recommendation is made;
  - b. where applicable, the 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:  
provided that the Information referred to in paragraphs (a) and (b) may be provided to the consumer in the form of additional pre-contractual Information.
- R.1.2.101 Where Advisory Services are provided to Clients:
- a. Regulated Persons or Credit Intermediaries shall obtain the necessary information regarding the Clients' personal and financial situation, their preferences and objectives so as to enable the recommendation of suitable Credit Agreements. Such an assessment shall be based on information that is up to date at that moment in time and shall take into account reasonable assumptions as to risks to the Client's situation over the term of the proposed Credit Agreement;
  - b. Regulated Persons or Tied Credit Intermediaries shall consider a sufficiently large number of Credit Agreements in their product range and recommend a suitable Credit Agreement or several suitable Credit Agreements from among their product range for the Client's needs, financial situation and personal circumstances;



- c. non-Tied Credit Intermediaries shall consider a sufficiently large number of Credit Agreements available on the market and recommend a suitable Credit Agreement or several suitable Credit Agreements available on the market for the Client's needs, financial situation and personal circumstances;
- d. Regulated Persons and Credit Intermediaries shall act in the best interests of the Client by:
  - i. informing themselves about the Client's needs and circumstances; and
  - ii. recommending suitable Credit Agreements in accordance with paragraphs (a), (b) and (c); and
- e. Regulated Persons or Credit Intermediaries shall give the Client a record on paper or on another Durable Medium of the recommendation provided.

R.1.2.102 The use of the term 'advice' and 'advisor' or similar terms shall be prohibited when the Advisory Services are being provided to Clients by Regulated Persons or Tied Credit Intermediaries.

R.1.2.103 Regulated Persons and Credit Intermediaries shall warn a Client when, considering the Client's financial situation, a Credit Agreement may include a specific risk for the Client.

R.1.2.104 Advisory Services shall only be provided by Regulated Persons or Credit Intermediaries.

R.1.2.105 Rules R.1.2.99 to R.1.2.104 are without prejudice to R.1.2.91 and R.1.2.92 and any other provisions contained in the MCD Regulations<sup>5</sup> and in this Rulebook which serve to ensure that services are made available to Clients to help them understand their financial needs and which types of Retail Products are likely to meet those needs.

## 2.4 Disclosures relating to the Credit Agreement

R.1.2.106 Without prejudice to Rules R.1.2.84 to R.1.2.98, the Regulated Person and the Credit Intermediary shall ensure that the Client is entitled to receive, free of charge, a copy of the draft Credit Agreement:

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<sup>5</sup>As stated in the Consultation Document, the MFSA supervision and powers will be expressly formalised through the issue (in due course) of relevant Maltese Subsidiary Legislation, as deemed necessary for the MFSA to assume the relevant supervisory remit. Therefore, for the purposes of Credit Institutions, this reference will (be substituted with a reference to Maltese subsidiary legislation to be issued under the Banking Act (Chapter 371 of the Laws of Malta).

Provided that this Rule shall not apply if the Regulated Persons is, at the time of the Client's request, unwilling to proceed to the conclusion of the Credit Agreement with the Client.

- R.1.2.107 The Credit Agreement shall be drawn up in writing or on a Durable Medium, and shall specify as much as possible, in a plain and intelligible language that can be easily understood by the Client, the following:
- a. the information listed under Rule R.1.2.94(c), (d), (f), (h) to (l), and (n);
  - b. the identities and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the Credit Intermediary involved;
  - c. the APRC and the total amount payable by the Client calculated at the time the Credit Agreement is concluded, provided that all the assumptions used in calculating that rate shall be mentioned;
  - d. the right of the Client to receive, on request and free of charge, at any time throughout the duration of the credit, a statement of account in the form of an amortisation table, provided that the amortisation table shall:
    - i. indicate the payments owing and the periods and conditions relating to the payment of such amounts;
    - ii. contain a breakdown of each repayment showing capital amortisation, the interest calculated on the basis of the borrowing rate and where applicable any additional costs;
    - iii. where the interest is not fixed or the additional costs may be changed under the Credit Agreement, it shall indicate clearly and concisely that the data contained in the table will remain valid only until such time as the borrowing rate or the additional costs are changed in accordance with the Credit Agreement;
  - e. if charges and interest are to be paid without capital amortisation, a statement showing the periods and conditions for the payment of the interest and of any associated recurrent and non-recurrent charges;
  - f. the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the Credit Agreement and the arrangement for its adjustment and, where applicable, any charges payable for default;
  - g. the procedure to be followed in exercising the right of termination of the Credit Agreement;
  - h. information concerning the Client's right to discharge their obligations under a Credit Agreement, in full or in part, before the agreed termination, and the conditions attached to that right as prescribed within R.5.10.237 to R.5.10.240;

- i. whether or not there is an out-of-court procedure for the Client to make a complaint, the redress mechanism available and the methods for having access to it;
- j. where applicable, other contractual terms and conditions.

- R.1.108 In the event of any changes in the borrowing rate, the Regulated Person shall inform the Client of any such change, on paper or another durable medium, before the change takes effect, provided that such information shall at least state:
- a. the amount of the payments to be made after the new borrowing rate takes effect; and
  - b. in cases where the number or frequency of the payments changes, provide the Client with particulars of such payment changes.

In case of a change in the Regulated Person's base rate which ultimately affects the final and effective borrowing rate, the notice period should be at least 60 days. Personalised information to Clients should include information about any changes to the repayment amount or changes to the term of the credit facility.

- R.1.2.109 Without prejudice to R.1.2.108, the parties to the Credit Agreement may agree in the Credit Agreement that:
- a. where the change in the borrowing rate is correlated with a change in a reference rate, the information referred to in R.1.2.108 is to be given to the Client periodically;
  - b. the new reference rate is to be made publicly available by appropriate means, which may include a publication on the Regulated Person's website or a public advert; and
  - c. the information concerning the new reference rate is to be kept available in the premises of the Regulated Person and communicated personally to the Client together with the amount of new periodic instalments.

- R.1.2.110 Where changes in the borrowing rate are determined by way of auction on the capital markets and it is therefore impossible for the Regulated Person to inform the Client of any change before the change takes effect, the Regulated Person shall, in good time before the auction, inform the Client on paper or on another durable medium of the upcoming procedure and provide an indication of how the borrowing rate could be affected.

- R.1.2.111 The Regulated Person shall make available to the Client, free of charge and at any time throughout the duration of the home loan, a statement of account in the form of an amortisation table.

- R.1.2.112 Every public deed of loan to which the rules under this section (and the [Credit Agreements for Consumers relating to Residential Immovable Property Regulations](#)) apply, shall make a direct reference to the Credit Agreement entered into and between the Regulated Person and, or the Credit Intermediary and the Client, the date thereof and shall state expressly that the Client has received, read, understood and agreed to all the terms set out in the Credit Agreement, after due explanation by the Regulated Person and, or the Credit Intermediary, as may be amended from time to time according to the terms thereof.
- R.1.2.113 Without prejudice to other obligations provided for in the [Credit Agreements for Consumers relating to Residential Immovable Property Regulations](#), Regulated Persons shall ensure that prior to modifying the terms and conditions of the Credit Agreement, the Regulated Person communicates the following information to the Client:
- a. clear description of the proposed changes and, where applicable, of the need for the Client's consent or of the changes introduced by operation of law;
  - b. the timescale for the implementation of the changes referred to in paragraph (a);
  - c. the means for complaint available to the Client regarding the changes referred to in paragraph (a);
  - d. the time period available for lodging any such complaint; and
  - e. the name and address of the Competent Authority to which the Client can submit that complaint.
- R.1.2.114 Where the Credit Agreement is a variable rate credit, the Regulated Person shall ensure that:
- a. any indexes or reference rates used to calculate the borrowing rate are clear, accessible, objective and verifiable by the parties to the Credit Agreement and the MFSA; and
  - b. historical records of indexes for calculating the borrowing rates are maintained by the Regulated Person.

## Section 3: Disclosure Requirements for Clients entering into Consumer Credit Agreements

### 3.1 Applicability

- R.1.3.115 In addition to the applicability of Section 1 of this Chapter, the Rules and Guidance under this Section shall solely apply to Consumer Credit Agreements as set out in the Glossary of Definitions to this Rulebook. The term Credit Agreements within this Section shall therefore be construed as a reference to Consumer Credit Agreements.

### 3.2 General Requirements

- R.1.3.116 For the purpose of this Section, unless otherwise provided, the obligations of the Regulated Person shall equally apply to a Credit Intermediary where a Credit Intermediary presents or offers Credit Agreements to Clients, assists Clients by undertaking preparatory work in respect of Credit Agreements, or concludes Credit Agreements with Clients on behalf of the Regulated Person.
- R.1.3.117 Where a Credit Intermediary presents or offers Credit Agreements to Clients, assists Clients by undertaking preparatory work in respect of Credit Agreements, or concludes Credit Agreements with Clients on behalf of the Regulated Person, it shall:
- a. indicate in any advertising and documentation intended for Clients the extent of the Credit Intermediary's powers, in particular whether the Credit Intermediary works exclusively with one or more Regulated Person or as an independent intermediary;
  - b. disclose the fee, if any, payable by the Client for its services, which fee shall be agreed in writing or on a Durable Medium between the Client and the Credit Intermediary before the conclusion of the Credit Agreement; and
  - c. disclose the fee, if any, payable by the Client to the Credit Intermediary for its services to the Regulated Person for the purpose of calculating the APRC.

- R.1.3.118 Rules R.1.3.119 to R.1.3.125 and R.1.3.133 to R.1.3.138 shall not apply to Regulated Persons providing goods or services acting as Credit Intermediaries in an ancillary capacity. This is without prejudice to the Regulated Person's obligation to ensure that the Client receives the pre-contractual Information referred to under Rules R.1.3.121 to R.1.3.125 and R.1.3.133 to R.1.3.137.
- R.1.3.119 In good time before a Credit Agreement is concluded, a Regulated Person, and where applicable a Credit Intermediary, on the basis of the credit terms and conditions offered by the Regulated Person, and taking into account the preferences expressed and Information supplied by the Client, shall provide to the Client the Information identified under Rules R.1.3.121 to R.1.3.125, in order to assist the Client in comparing different offers and reaching an informed decision on whether to conclude a Credit Agreement with the Regulated Person.
- R.1.3.120 With respect to Credit Agreements falling under Rules R.1.3.121 to R.1.3.125, a Regulated Person and, where applicable, a Credit Intermediary, shall provide adequate explanations to the Client in order to place the Client in a position enabling them to assess whether the proposed Credit Agreement is adapted to their needs and financial situation, where appropriate by explaining the pre-contractual Information provided under Rules R.1.3.3.121 to R.1.3.3.125, the essential characteristics of the Retail Products proposed and specific effects they may have on the Client, including the consequences of default in payment by the Client.
- R.1.3.121 The Information to be disclosed by a Regulated Person or Credit Intermediary to Clients under R.1.3.119, other than Clients whose Credit Agreement is regulated by Rules R.1.3.133 to R.1.3.138, shall specify:
- a. the type of credit to be provided under the Credit Agreement;
  - b. the identity and geographical address of the Regulated Person and, where applicable, of the Credit Intermediary;
  - c. the total amount of credit to be provided under the Credit Agreement and the conditions governing the drawdown of credit;
  - d. the duration of the Credit Agreement;
  - e. in the case of credit in the form of deferred payment for specific goods or services or linked-credit agreements, the goods, services and the cash price thereof;
  - f. the borrowing rate, the conditions governing the application of that rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions, and procedures for changing the borrowing rate; and if different rates

- apply in different circumstances, the above Information shall be supplied in respect of all the applicable rates;
- g. the APRC and the total amount payable by the Client illustrated by means of a representative example mentioning all the assumptions used in order to calculate that rate. Where the Client has informed the Regulated Person of one or more components of his preferred credit, such as the duration of the Credit Agreement and the total amount of credit, the Regulated Person shall take those components into account; if a Credit Agreement provides different ways of drawdown with different charges or borrowing rates and the Regulated Person uses the assumptions set out in point(b) of Part II of Annex III, it shall indicate that other drawdown mechanisms for this type of Credit Agreement may result in a higher APRC;
  - h. the amount, number and frequency of payments to be made by the Client and where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purpose of reimbursement;
  - i. where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, and the charges for using a means of payment for both payment transactions and drawdowns;
  - j. where applicable, any other charges deriving from a Credit Agreement and the conditions under which those charges may be changed;
  - k. where applicable, a statement that fees will be payable by the Client to a notary public on conclusion of the Credit Agreement;
  - l. the obligation, if any, to enter into a contract for Ancillary Services relating to the Client's Credit Agreement, in particular insurance services, where the conclusion of such a contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;
  - m. the interest rate applicable in the case of late payments and the arrangements for its adjustment, and where applicable, any charges payable for default;
  - n. a warning relating to the consequences of missing payments;
  - o. where applicable, the sureties which need to be identified by the Client;
  - p. in the case of a Credit Agreement under which payments made by a Client do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the Credit Agreement or in an ancillary agreement, a clear and concise statement that such Credit Agreements do not provide for a guarantee of repayment of



- the total amount of credit drawn down under the Credit Agreement unless such a guarantee is given;
- q. the existence or absence of a right of withdrawal;
  - r. the Client's right of early repayment, and where applicable the Client's right to compensation and the way in which compensation is to be determined in accordance with the right to early repayment as prescribed in R.5.10.229 to R.5.10.235;
  - s. the Client's right to be informed immediately and free of charge of the result of a database consultation carried out for the purposes of assessing Credit Worthiness;
  - t. if applicable, the period of time during which the Regulated Person is bound by the pre-contractual Information; and
  - u. the Client's right to be supplied, on request and free of charge from the Regulated Person, with a copy of the draft Credit Agreement. This provision shall not apply if the Regulated Person is at the time of the request unwilling to proceed to the conclusion of the Credit Agreement with the Client.

R.1.3.122 The Information under Rule R.1.3.121 shall be provided by means of the form contained in Annex IV to this Chapter:

Provided that the Regulated Person shall be deemed to have discharged the obligation of providing Information under this regulation and of providing Information under Regulations 5(1) and 5(2) of the [Distance Selling \(Retail Financial Services\) Regulations \(Legal Notice 36 of 2005\)](#), if the creditor has supplied the Information in the form contained in Annex IV to this Chapter.

R.1.3.123 Should the Regulated Person provide to the Client additional Information to that identified under R.1.3.121, a separate document shall be provided for this purpose, and shall be annexed to the one under R.1.3.122.

R.1.3.124 In the case of voice telephony communications as referred to in Regulation 5(3) of the [Distance Selling \(Retail Financial Services\) Regulations \(Legal Notice 36 of 2005\)](#), the description of the main characteristics of the financial services to be provided shall specify, at least:

- a. the total amount of credit and the conditions governing the drawdown;
- b. the duration of the Credit Agreement;



- c. the goods, services and the cash price in the case of credit in the form of deferred payment for specific goods or services or linked Credit Agreements;
- d. the borrowing rate, the conditions governing the application of that rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions, and procedure for changing the borrowing rate; and if different rates apply in different circumstances, the above Information shall be supplied in respect of all the applicable rates;
- e. the amount, number and frequency of payments to be made by the Client and where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purpose of reimbursement;
- f. the APRC illustrated by means of a representative example; and
- g. the total amount payable by the Client.

R.1.3.125 If the agreement has been concluded at the Client's request using a means of Distance Communication which does not enable the Information to be provided in accordance with R.1.3.121, in particular in the case referred to in R.1.3.124, the Regulated Person shall provide the Client with the full pre-contractual Information, using the form under Annex IV, immediately after the conclusion of the Credit Agreement.

### 3.3 Calculation of the Annual Percentage Rate of Charge (APRC) under the Consumer Credit Regulations

R.1.3.126 The Annual Percentage Rate of Charge (APRC) means the total cost of the credit to the Client, expressed as an annual percentage of the total amount of credit.

R.1.3.127 The APRC, equating, on an annual basis, to the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the Regulated Person and the Client, shall be calculated in accordance with the mathematical formula set out in Annex III to this Chapter.

R.1.3.128 The following costs shall be included in the total cost of credit to the Client:

- a. the costs of maintaining an account recording both payment transactions and drawdowns;
- b. the costs of using a means of payment for both payment transactions and drawdowns; and
- c. other costs relating to payment transactions.

R.1.3.129 The costs mentioned in R.1.3.128 shall not be included in the total cost of credit to the Client where the opening of the account is optional and the costs of the account have been clearly and separately shown in the Client Credit Agreement or in any other agreement concluded with the Client.

R.1.3.130 For the purpose of calculating the APRC, the total cost of the credit to the Client shall be determined, with the exception of any charges payable by the Client for non-compliance with any of his commitments laid down in the Credit Agreement and charges other than the purchase price which, for purchases of goods or services, he is obliged to pay whether the transaction is effected in cash or on credit.

R.1.3.131 The calculation of the APRC shall be based on the assumption that:

- a. the Credit Agreement is to remain valid for the period agreed and that the Regulated Person and the Client will fulfil their obligations under the terms and by the dates specified in the Credit Agreement; and
- b. the borrowing rate and other charges will remain fixed in relation to the initial level and will remain applicable until the end of the Credit Agreement in the circumstance that the Credit Agreement contains a clause allowing variations in the borrowing rate and, where applicable, charges contained in the APRC but unquantifiable at the time of calculation.

R.1.3.132 Where necessary the additional assumptions set out in Annex III to this Chapter may be used in calculating the APRC.

It is also to be noted also that an [APRC simulator](#) was published by the European Commission to assist users to calculate the APRC of a given credit. The simulator tool contains an option to select the type of credit and is accompanied by a report presenting examples and instructions on how to use the said tool.

### 3.4 Pre-contractual Information relating to an Overdraft Facility where credit has to be repaid on demand or within three months

- R.1.3.133 In the case of a Credit Agreement which takes the form of an Overdraft Facility and where the credit has to be repaid on demand or within three months, the Regulated Person and, where applicable, the Credit Intermediary, shall in good time before the Credit Agreement is entered into, provide to the Client, on the basis of the credit terms and conditions offered by the Regulated Person and, if applicable, the preferences expressed and Information supplied by the Client, in order to enable him to compare different offers to take an informed decision on whether to conclude a Credit Agreement, with Information which shall specify:
- a. the type of credit to be provided under the Credit Agreement;
  - b. the identity and geographical address of the Regulated Person and, where applicable, of the Credit Intermediary;
  - c. the total amount of credit to be provided under the Credit Agreement;
  - d. the duration of the Credit Agreement;
  - e. the borrowing rate, the conditions governing the application of that rate and any index or reference rate applicable to the initial borrowing rate, the charges applicable from the time the Credit Agreement is concluded, and where applicable, the conditions under which those charges may be changed;
  - f. the conditions and procedure for terminating the Credit Agreement;
  - g. where applicable, an indication that the Client maybe requested to repay the amount of credit in full at any time;
  - h. the interest rate applicable in the case of late payment and the arrangements for its adjustment, and where applicable, any charges payable for default;
  - i. the charges applicable from the time the Credit Agreement is concluded and, where applicable, the conditions under which those charges may be changed;
  - j. the Client's right to be informed immediately and free of charge of the result of a database consultation carried out for the purposes of assessing creditworthiness if the Client's credit application is rejected on the basis of such database consultation; and
  - k. if applicable, the period of time during which the Regulated Person is bound by the pre-contractual Information.
- R.1.3.134 The Information under Rule R.1.3.133 shall be provided on paper or on another Durable Medium and all Information shall be equally prominent. It may be provided by means of the form contained in Annex V to this Chapter, provided that the Regulated Person shall be deemed to have

discharged the obligation of providing Information under Rule R.1.3.133 and the Information requested under the [Distance Selling \(Retail Financial Services\) Regulations \(Legal Notice 36 of 2005\)](#) should the Credit Agreement be entered into on a Distance Contract basis, if the Regulated Person has supplied the Information contained in Annex V to this Chapter.

R.1.3.135 In the case of voice telephony communication and where the Client requests that the Overdraft Facility be made available with immediate effect, the description of the main characteristics of the Retail Product or Service shall include at least the items identified under Rule R.1.3.133(c), (e) and (g). In addition, in Credit Agreements of the kind referred to in R.1.3.136, the description of the main characteristics shall include a specification of the duration of the Credit Agreement.

R.1.3.136 In the case of Credit Agreements which provide for arrangements to be agreed by the Regulated Person and the Client in respect of deferred payments or repayment methods, where the Client is already in default on an initial Credit Agreement and where:

- a. such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and
- b. the Client would not thereby be subject to terms less favourable than those laid down in the initial Credit Agreement,

the Regulated Person shall provide the Client with:

- a. the Information provided for under Rule R.1.3.133(a) to (f), (h), (j), (k);
- b. the amount, number and frequency of payments to be made by the Client and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;
- c. the right to early repayment, and where applicable, Information concerning the Regulated Person's right to compensation and the way in which that compensation will be determined; and
- d. the annual percentage of charge, illustrated by means of representative examples, mentioning all the assumptions used in order to calculate that rate;

Provided that, where the Credit Agreement is in the form of an Overdraft Facility and where the credit has to be repaid on demand or within three months, it shall be regulated by Rule R.1.3.133.

R.1.3.137 If the agreement has been concluded at the Client's request using a means of Distance Communication which does not enable the Information to be provided in accordance with Rules R.1.3.133,

R.1.3.134 and R.1.3.136, including in the cases referred to in Rule R.1.3.135, the Regulated Person shall immediately, after the conclusion of the Credit Agreement, fulfil his obligations under Rules R.1.3.133, R.1.3.134 and R.1.3.136 by providing the contractual Information pursuant to Rules R.1.3.142 – R.1.3.149 in so far as those rules are applicable.

R.1.3.138 For Credit Agreements in the form of Overdraft Facilities but where the credit has to be repaid within one month, in the case of voice telephony communication where the Client requests that the Overdraft Facility be made available with immediate effect, the description of the main characteristics of the Retail Product or Service shall include at least the items identified under Rule R.1.3.133(c), (e) and (g).

### 3.5 Clients' Right to receiving a copy of the Credit Agreement

R.1.3.139 The Client shall be entitled to receive, free of charge, and upon request, a copy of the draft Credit Agreement.

R.1.3.140 Rule R.1.3.139 does not apply if the Regulated Person is, at the time of the Client's request, unwilling to proceed to the conclusion of the Credit Agreement with the Client.

R.1.3.141 On conclusion of the Credit Agreement, all contracting parties shall be entitled to receive, a copy of the final Credit Agreement.

R.1.3.142 The Credit Agreement referred to in Rule R.1.3.141 shall be drawn up in writing or on a Durable Medium and shall specify, in a clear and concise manner, the following:

- a. the Information listed under R.1.3.121(a), (c) to (f), (h), (i), (j), (n) and (o);
- b. the identities and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the Credit Intermediary involved;
- c. the APRC and the total amount payable by the Client calculated at the time the Credit Agreement is concluded, provided that all the assumptions used in calculating that rate shall be mentioned;
- d. where capital amortisation of a Credit Agreement with a fixed duration is involved, the right of the Client to receive, on request and free of charge, at any time throughout the duration of the Credit

Agreement, a statement of account in the form of an amortisation table.

The amortisation table shall:

- i. indicate the payments owing and the periods and conditions relating to the payment of such amounts;
  - ii. contain a breakdown of each repayment showing capital amortisation, the interest calculated on the basis of the borrowing rate and where applicable any additional costs;
  - iii. where the interest is not fixed or the additional costs may be changed under the Credit Agreement, it shall indicate clearly and concisely that the data contained in the table will remain valid only until such time as the borrowing rate or the additional costs are changed in accordance with the Credit Agreement;
- e. an indication, where applicable, that the Client may, at any time, upon demand be requested to repay the amount of credit in full;
- f. the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the Credit Agreement and the arrangement for its adjustment and, where applicable, any charges payable for default;
- g. the existence or absence of a right of withdrawal together with conditions attached to such right, which conditions shall include:
- i. the period during which the right may be exercised;
  - ii. the Information concerning the obligation of the consumer to pay the capital drawn down and the interest in accordance with R.5.9.219; and
- h. the amount of interest payable per day;
- i. Information concerning the rights resulting under R.5.10.228 to R.5.10.234 and the conditions attached to those rights;
- j. the procedure to be followed in exercising the right of termination of the Credit Agreement;
- k. whether or not there is an out-of-court procedure for the Client to make a complaint, the redress mechanism available and the methods for having access to it;
- l. where applicable, the name and address of the competent supervisory authority;
- m. where applicable, other contractual terms and conditions; and
- n. where applicable, a statement, that notarial fees will be payable.

R.1.3.143 In the case of a Credit Agreement under which payments made by the Client do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under the conditions laid down in the Credit Agreement or in an ancillary agreement, the Information contained in R.1.3.142 shall, unless a guarantee is provided, include a clear and concise statement

that such Credit Agreements do not provide a guarantee of repayment of the total amount of credit drawn down under the Credit Agreement.

- R.1.3.144 In the case of a Credit Agreement falling under R.1.3.133, the Credit Agreement shall specify, in a clear and precise manner, the following Information:
- a. the type of credit;
  - b. the identities and geographical addresses of the contracting parties, and where applicable, of the Credit Intermediary involved;
  - c. the total amount of the credit and the conditions governing the drawdown;
  - d. the borrowing rate, the conditions governing the application of that rate, and, where available any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate; if different borrowing rates apply in different circumstances, the above Information should be made applicable to all the respective rates;
  - e. an indication that the Client may, at any time, upon demand be requested to repay the amount of credit in full;
  - f. conditions relating to the exercise of the right of withdrawal from the Credit Agreement;
  - g. Information concerning the charges applicable from the time the agreement is concluded and, where applicable, the conditions under which those charges may be changed; and
  - h. the duration of the Credit Agreement.
- R.1.3.145 Should there be a change in the borrowing rate, the Regulated Person shall:
- a. inform the Client of such a change before the change enters into force;
  - b. communicate the Information in writing or on a Durable Medium;
  - c. inform the Client of the amount of payments to be made after the entry into force of the new borrowing rates; and
  - d. if the number or frequency of the payments changes, provide the Client with the particulars of such payment changes.
- R.1.3.146 However, the parties may agree in the Credit Agreement that the Information referred to in R.1.3.145 is to be given to the Client periodically in cases where the change in the borrowing rate is caused by a change in a reference rate, the new reference rate is made publicly available by appropriate means, which may include a publication on the Regulated Person's website or a public advert, and the Information concerning the new reference rate is also kept available in the premises of the Regulated Person.



In case of a change in the Regulated Person's base rate which ultimately affects the final and effective borrowing rate, the notice period should be at least 60 days. Personalised information to Clients should include information about any changes to the repayment amount or changes to the term of the Credit Facility.

R.1.3.147 Without prejudice to other obligations provided for in the [Consumer Credit Regulations](#), Regulated Persons shall ensure that prior to modifying the terms and conditions of the Credit Agreement, the Regulated Person communicates the following information to the Client:

- a. clear description of the proposed changes and, where applicable, of the need for the Client's consent or of the changes introduced by operation of law;
- b. the timescale for the implementation of the changes referred to in paragraph (a);
- c. the means for complaint available to the Client regarding the changes referred to in paragraph (a);
- d. the time period available for lodging any such complaint; and
- e. the name and address of the Competent Authority to which the Client can submit that complaint.

R.1.3.148 Where the Credit Agreement covers credit in the form of an overdraft facility:

- a. the Client shall be kept regularly informed in writing or on a Durable Medium by means of a statement of account of:
  - i. the precise period to which the statement of account relates;
  - ii. the amounts and dates of drawdowns;
  - iii. the balance from the previous statement and the date thereof;
  - iv. the new balance;
  - v. the dates and amounts of payments made by the Client;
  - vi. the borrowing rate applied;
  - vii. any charges that have been applied; and
  - viii. where applicable, the minimum amount to be paid;
- b. should there be a change in the borrowing rate or in any charges payable, the Client is entitled to be informed in writing or on a Durable Medium by the Regulated Person of the change involved and before the change enters into force;

Provided that, the parties may agree in the Credit Agreement that Information concerning the changes in the borrowing rate is to be given in the manner provided for in paragraph (a) of this Rule in cases where the change in the borrowing rate is caused by a change in the reference rate, the new reference rate is made publicly available by appropriate means, which may include a publication on the Regulated Person's website or a public advert, and the Information concerning the new reference rate is also kept available in the premises of the Regulated Person.

- R.1.3.149 Where R.1.3.142(d) applies, the Regulated Person shall make available to the consumer, free of charge and at any time throughout the duration of the Credit Agreement, a statement of account in the form of an amortisation table.

### 3.6 Other Disclosures

- R.1.3.150 Where a Client enters into a Credit Agreement to open a current account and the Client is allowed an overrun, the Credit Agreement shall contain in addition Information relating to:
- a. the borrowing rate;
  - b. the conditions governing the application of that rate;
  - c. the index or reference rate applicable to the initial borrowing rate;
  - d. the charges applicable from the time the Credit Agreement is concluded; and
  - e. the conditions under which those charges may be changed, if applicable.
- R.1.3.151 In the event of a significant overrunning exceeding a period of one month, the Regulated Person shall inform the Client without delay of the overrunning in writing or on a Durable Medium of the amount involved, the borrowing rate and, of any penalties, charges or interest on arrears which are applicable.
- R.1.3.152 The agreement under R.1.3.150 shall be in writing or on a Durable Medium and provided on a regular basis.

## Section 4: Rules applicable to Regulated Persons offering Payment Accounts in terms of the Payment Accounts Regulations

### 4.1 Applicability

- R.1.4.153 In addition to the applicability of Section 1 of this Chapter, the Rules under this section shall only apply to Payment Accounts through which Clients are able at least to:
- a. place funds in a Payment Account;
  - b. withdraw cash from a Payment Account; and
  - c. execute and receive payment transactions, including credit transfers, to and from a third party.

### 4.2 General Requirements

- R.1.4.154 A Regulated Person shall make available to Clients a glossary of at least the standardised terms set out in the list of the most representative services linked to a Payment Account (Annex VI), as issued and periodically updated by the MFSA.
- R.1.4.155 The glossary shall be available in English and Maltese and in any other language agreed upon by the Regulated Person and the Client.
- R.1.4.156 The glossary, including other definitions, if any, shall be made available in clear, unambiguous and non-technical language and shall not be misleading.
- R.1.4.157 A Regulated Person shall ensure that the glossary is:
- a. made available to Clients at any time;
  - b. provided in an easily accessible manner, including to the general public:
    - i. in electronic form on the Regulated Person's websites;
    - ii. made accessible to Clients in the premises of the Regulated Person.
- R.1.4.158 Upon request by the Client, the Regulated Person shall provide the glossary on paper or other Durable Medium free of charge.

- R.1.4.159 Where a Regulated Person does not offer a service appearing in the list of the most representative services linked to a Payment Account (Annex VI), it should indicate this by, for example, marking the service as 'not offered' or 'not applicable'.

## 4.3 Pre-Contractual Disclosures

### 4.3.1 Fee Information Document

- R.1.4.160 Without prejudice to Article 52(3) of [Directive \(EU\) 2015/2366](#) and Articles 4 to 8 of [Directive 2008/48/EC](#) and as implemented and laid down in the Maltese laws transposing these Directives, a Regulated Person shall, in good time before entering into a contract for a Payment Account with a Client, provide the Client with a Fee Information Document, the content and presentation format of which will be ensured by the same Regulated Person to be in accordance with the [Commission Implementing Regulation \(EU\) 2018/34](#), as implemented within this Chapter.
- R.1.4.161 Regulated Persons shall utilise the standardised template for the Fee Information Document indicated in Annex VII.
- R.1.4.162 A Regulated Person shall ensure that the Fee Information Document is:
- a. made available to Clients at any time;
  - b. provided in an easily accessible manner, including to the general public:
    - i. in electronic form on the Regulated Person's websites
    - ii. made accessible to Clients in the premises of the Regulated Person.
- R.1.4.163 Upon request by the Client, the Regulated Person shall provide the Fee Information Document on paper or other Durable Medium free of charge.
- R.1.4.164 The Regulated Person must ensure that:
- a. The Fee Information Document uses the standardised terms contained in the list of the most representative services linked to a Payment Account, as issued and periodically updated by the MFSA.
  - b. Where the Regulated Person offers any service featured in the list of the most representative services linked to a Payment Account

(Annex VI), the corresponding fee for that service shall also be quoted in the Fee Information Document.

- c. The Fee Information Document shall also include a list of penalties which may be incurred by the Client for the use of a Payment Account.

R.1.4.165 A Regulated Person shall provide a separate Fee Information Document in respect of each Payment Account it offers to Clients.

R.1.4.166 Notwithstanding the provision of a Payment Account with basic features referred to in Part 4 of the [Payment Accounts Regulations \(S.L. 371.18\)](#) , where a Regulated Person offers only one Payment Account to Clients that can be combined with different packages of services referred to in Schedule I paragraph (3) of the [Payment Accounts Regulations \(S.L. 371.18\)](#), the Regulated Person may produce more than one Fee Information Document in respect of that account, provided that each Fee Information Document contains at least one package.

R.1.4.167 Where one or more services are offered as part of a package of services linked to a Payment Account, the Fee Information Document shall disclose:

- a. the fee for the entire package;
- b. the services included in the package and their quantity; and
- c. the additional fee for any service that exceeds the quantity covered by the package fee.

*G.1.4.19 In order to allow Clients to choose the most suitable account offer for their needs, while still ensuring a high level of standardisation, Regulated Persons may produce more than one Fee Information Document in respect of that Payment Account, provided that at least one package is included in each fee Information document.*

*G.1.4.20 If services that exceed the quantity covered by a package are not included in the list of the most representative services linked to a Payment Account (Annex VI) and therefore, are not displayed in the Fee Information Document, they should be shown in a separate table and not combined with information on the content of the packages, in order to give Clients a clear overview of the package.*

R.1.4.168 The Fee Information Document shall:

- a. upon request by the Client, be provided on paper or another Durable Medium;
- b. be a short and stand-alone document;

- c. be presented and laid out in a way that is clear and easy to read using characters of a reasonable size;
- d. be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
- e. be written in English and, if requested by the Client, in Maltese or, in any other language agreed upon by the Client and the Regulated Person;
- f. be accurate, not misleading, and expressed in the currency of the Payment Account or, if agreed by the Client and the Regulated Person, in another currency of the European Union;
- g. contain the title "Fee Information Document" at the top of the first page next to the common symbol (as presented in Annex VII) to distinguish the fee Information document from other documentation; and
- h. include a statement that it contains fees for the most representative services linked to a Payment Account, any penalties which may be incurred for the use of the Payment Account, and that complete pre-contractual and contractual Information on all the services is provided in other documents.

R.1.4.169 Moreover, Regulated Persons shall ensure that the Fee Information Document template in Annex VII is presented in line with the following rules:

- a. The fee Information document shall:
  - i. be presented in A4 portrait format;
  - ii. contain the title 'Fee Information Document' at the top of the first page, with the title centred and positioned between the logo of the Regulated Person at the top left-hand side of the document and the common symbol at the top right-hand side of the document;
  - iii. contain the common symbol of the size 2,5 cm × 2,5 cm and displayed as shown in the template laid down in Annex VII;
  - iv. use font type Arial or another font type similar to Arial and font size 11, with exceptions for the title 'Fee Information Document', which uses font size 16 in bold type; font size 14 in bold type for the headings, and font size 12 in bold for the sub-headings, unless an increase in the font size or use of braille font type for visually impaired persons is either required or agreed between the Client and the Regulated Person;

- v. be produced in black and white, with exception of the logo of the Regulated Person and the common symbol which may be presented in colour;
  - vi. contain the headings in semi-dark grey using the colour pattern with reference number 166,166,166 of the RGB colour model and the sub-headings in light-grey colour using the colour pattern with reference number 191,191,191 of the RGB colour model; and
  - vii. have its pages numbered.
- b. Where the common symbol is displayed in colour it shall follow the colour pattern with reference number 0/51/153 (hexadecimal: 003399) of the RGB colour model for the background and colour pattern 255/204/0 (hexadecimal: FFCC00) of the RGB colour model for the symbol.
  - c. The logo of the Regulated Person shall be of an equivalent size to the size of the common symbol.
  - d. The logo may only be displayed in colour if the common symbol is also displayed in colour. Where printed in black and white the common symbol shall be clearly readable.
  - e. The name of the Regulated Person that provides the account shall be included in bold type and left aligned.
  - f. The name of the account shall be included in bold type, left aligned and below the name of the Regulated Person.
  - g. The date when the Regulated Person last updated the fee Information document shall be included, using the font type Arial or another font similar to Arial and font size 11, left aligned and included below the account name.
  - h. The text of the introductory statement specified in the Annex VII template shall be reproduced in the fee Information document, using line spacing 1,15, 0 pt before and 10 pt after the text.
  - i. Regulated Persons shall replace the square brackets with the names of the relevant pre-contractual and contractual documents.

- R.1.4.170 When completing the 'Services and Fee' table, as specified in the Fee Information Document template in Annex VII, Regulated Persons shall list the services that are included in the list of the most representative services linked to a Payment Account (Annex VI), where the Regulated Person offers such services, and their corresponding fees in the table on services and fees as follows:
- a. the services shall be inserted in the column 'Service', left aligned, in bold type;



- b. each service shall be listed only once and shall be displayed under the respective sub-heading shown in the table, such as the provision or the maintenance of the account shall be listed under sub-heading 'General account services';
- c. the fees corresponding to the services shall be shown in the column 'Fee', right aligned;
- d. where the fee is charged with regular frequency rather than on a per use basis, the frequency shall be indicated in the column 'Fee', left aligned, followed by the corresponding fee for that period, right aligned; the total annual fee shall be disclosed on the line directly underneath the frequency, in bold type, left aligned and using the wording 'Total annual fee' with the corresponding fee right aligned;
- e. the line spacing shall be single, 0 pt before and 0 pt after each service and fee;

In addition, it must also be ensured that:

- a. Where none of the services offered by the Regulated Person correspond to a sub-heading included in the template under Annex VII, the entire row related to that sub-heading shall be deleted, including the title of the sub-heading;
- b. Where Regulated Persons do not offer one or more services from the list of the most representative services linked to a Payment Account, or where the service is not made available with the account, the phrase 'service not available' shall be used;
- c. Where separate fees are charged in one or more of the following ways, Regulated Persons shall provide, in the column 'Fee' of that service and on a separate line, a description of each fee-charging instance, channel or condition ('types of fees'):
  - i. for different fee-charging instances of the provision of the same service, such as an initial set-up fee and subsequent execution fees for the same service;
  - ii. for different channels through which the same service is requested, used or provided, such as by phone, Branch or online;
  - iii. depending on whether a specific condition for the same service is met, such as adherence to a minimum or maximum threshold amount for credit transfers or cash withdrawals.The description shall be left aligned and the fee shall be right aligned;
- d. Where fees are charged dependent on a combination of several types of fees, such as fees that differ by channel and are then further separated depending on whether a threshold amount is met,

Regulated Persons shall, in addition to applying the above, right align the description of each additional type of fee.

- R.1.4.171 With respect to packages of services linked to a Payment Account which are charged as part of the fees under the sub-heading 'General account services' as indicated in the template under Annex VII:
- a. All services included in the package, regardless of whether they are included in the final list of the most representative services linked to a Payment Account (Annex VI), shall be listed in the section of the table on general account service, in the row on package of services;
  - b. Regulated Persons shall include Information on the additional fee for any service that exceeds the quantity covered by the package of services as set out in R.1.4.173;
  - c. Where the number of all services covered by the package of services is not limited, Regulated Persons shall delete the statement at the bottom of the row 'Services beyond these quantities will be charged separately'; and
  - d. The entire row on package of services shall be deleted, where a package of services is not offered with the account and when the package of services is charged separately from any fees for general account services.
- R.1.4.172 With respect to packages of services linked to a Payment Account which are charged separately from fees under the sub-heading 'General account services' as indicated in the template under Annex VII:
- a. Regulated Persons shall include the following Information in the table on package of services:
    - i. a list of all services included in the package, regardless of whether they are included in the list of the most representative services linked to a Payment Account (Annex VI);
    - ii. the quantity of each service covered by the package fee, which may be either a number or an indication that the number of services is not limited;
    - iii. the package fee, in the column 'Fee', right aligned.
  - b. Where the package is charged with regular frequency, the frequency shall be displayed in the 'Fee' column and left aligned, with the total annual fee displayed on the line directly underneath the frequency, in bold type and using the wording 'Total annual fee'.
  - c. Regulated Persons shall include Information on the additional fee for any service that exceeds the quantity covered by the package of services as set out in R.1.4.173.

- d. Where the number of all services in the package is not limited, Regulated Persons shall delete the statement at the bottom of the table that reads 'Services beyond these quantities will be charged separately'.
- e. Where more than one package is included in the fee Information document, Regulated Persons shall provide the Information under this Rule for each package in a separate table, indicating the brand name of the package of services, where applicable.
- f. Regulated Persons shall delete the entire table, where the package of services is not offered with the account, or where the package of services is charged as part of the fee for any general account services.

R.1.4.173 Additional fees for services exceeding the quantity covered by packages of services linked to a Payment Account shall be included in the 'Information on additional services' table indicated in the template under Annex VII. In this respect:

- a. Regulated Persons shall include in this table Information on additional fees for any service that exceeds the quantity covered by a package referred to in R.1.4.171 and R.1.4.172, if this Information is not included in the table of services and fees, or where the corresponding fee for the service is different than shown in the table;
- b. Where Regulated Persons offer more than one package and the additional fees differ dependent on the package, Regulated Persons shall list the different fees separately for each package and use the brand name of the package, where applicable;
- c. In completing this table, Regulated Persons shall follow the same presentation and structure as set out in this Regulation, where applicable;
- d. Where the Fee Information Document does not include any Information on packages of services, Regulated Persons shall delete the 'Information on additional services table'.

*G.1.4.21 Regulated Persons may delete the 'Comprehensive cost indicator' table included in the template under Annex VII, as this is not legally required.*

R.1.4.174 Where a brand name is used throughout the fee Information document, it shall follow directly after the name of the service, utilising font type Arial or another font type similar to Arial and font size 11, as well as square brackets.

- R.1.4.175 Where the Fee Information Document is provided by electronic means, Regulated Persons may, provided that at the same time the Client is provided with a copy of the Fee Information Document in line with the template laid down in Annex VII and completed as set out above, modify the template in only the following ways:
- a. increase the font sizes, provided that the proportion of sizes set out in R.1.4.169(i) is retained;
  - b. where the dimensions of the electronic tools are such that using several tables and columns would make the Fee Information Document difficult to read, use a single column or a single table if the order of Information, headings and sub-headings are retained;
  - c. use electronic tools, such as layering and pop-ups, provided that the title of the Fee Information Document, the common symbol, introductory statements, headings and sub-headings, are displayed prominently and the order of Information is retained.

In any case, the use of the electronic tools shall not be intrusive that it could distract the Client from the Information in the Fee Information Document. Information provided through layering and pop-ups shall be limited to the Information referred to in this Section of the Rulebook.

- R.1.4.176 The Fee Information Document shall be provided together with the Information required pursuant to other European Union or national legislation on Payment Accounts and related services.

## 4.3.2 Other Disclosures

- R.1.4.177 Regulated Persons offering a Payment Account with basic features shall provide detailed Information about the application process for the opening of a Payment Account with basic features. Such Information shall include an application form, as well as a list of any documents required to be submitted with the application. Such Information shall be made available online on the Regulated Person's website and, if so requested by the Client, on a Durable Medium, free of charge. It shall be the duty of the Regulated Person to keep such Information updated at all times.
- R.1.4.178 The services listed within the definition of a Payment Account with basic features as outlined in the Glossary of Definitions shall be offered by Regulated Persons to the extent that they already offer them to Clients

holding Payment Accounts other than a Payment Account with basic features.

- R.1.4.179 Regulated Persons must also publish information about whether it is possible to open an account:
- a. without visiting a Branch;
  - b. where no visit to a Branch is required, without an appointment;
  - c. on the basis of documents and information supplied in electronic form; and
  - d. by post.

- R.1.4.180 Regulated Persons shall make available to Clients, free of charge, accessible information and assistance about:
- a. the specific features of the Payment Account with basic features on offer;
  - b. any minimum balance requirement and any charges payable if the balance falls below the prescribed minimum;
  - c. the treatment of Inactive or Dormant accounts as set out in R.5.7.187 to R.5.7.194;
  - d. procedures around closing of accounts; and
  - e. any other associated fees and conditions of use.

Regulated Persons shall further ensure that the Information and assistance provided makes it clear that the purchase of additional services is not compulsory in order to access a Payment Account with basic features.

- R.1.4.181 Regulated Persons shall ensure that the information and assistance provided in accordance with R.1.4.180 makes it clear that the purchase of additional services is not compulsory in order to access a Payment Account with basic features.

- R.1.4.182 Where an application for a Payment Account with basic features is refused the Regulated Person shall, after taking its decision, immediately inform the Client in writing and free of charge, of the refusal and of the specific reason for that refusal, unless such disclosure would be contrary to objectives of national security, public policy or would run counter to the obligations a Regulated Person is under in terms of any applicable anti-money laundering and combating the funding of terrorism legislation.

Where notification of the reason for refusal is given, the Regulated Person shall advise the Client of:

- d. the procedure for submitting a complaint to it against the refusal;

- e. the possibility to contact the MFSA and provide the relevant contact details; and
- f. the right to lodge a complaint with the Office of the Arbiter for Financial Services and provide the relevant contact details.

R.1.4.183 Regulated Persons shall disclose the average number of days it shall take to complete each of the following actions:

- a. Generating a working account number for the Client;
- b. Issuing a debit card to a Client who requests one as part of their application to open an account or for whom the issue of a debit card is a term or condition of the account contract;
- c. Enabling internet banking facilities to a Client who requests it as part of their application to open an account or for whom the provision of Internet Banking is a term or condition of the account contract; and
- d. Providing an authorised overdraft agreement where the Client has requested same as part of their application to open the account.

R.1.4.184 Where a Client indicates to a Regulated Person with whom that Client holds a Payment Account that the Client wishes to open a Payment Account with another Payment Service Provider located in another Member State, the Regulated Person shall, on receipt of such request, and subject to R.1.4.185, provide the following assistance to the Client:

- a. provide the Client, free of charge, with:
  - i. a list of all currently active standing orders for credit transfers and debtor-driven direct debit mandates, where available; and
  - ii. available information about recurring incoming credit transfers and creditor-driven direct debits executed on the Client's Payment Account in the previous thirteen months:

Provided that this shall not entail any obligation on the part of the Payment Service Provider located in another Member State with which the Client wishes to open a Payment Account, to set up services that it does not provide;

- b. transfer any positive balance remaining on the Payment Account held by the Client to the Payment Account opened or held by the Client with the new Payment Service Provider located in another Member State; and
- c. close the Payment Account held by the Client.

R.1.4.185 Without prejudice to Articles 55(1) and 55(6) of [Directive \(EU\) 2015/2366](#) and as implemented and laid down in the Maltese laws transposing this Directive, and if the Client does not have any outstanding obligations on a Payment Account, the Maltese Regulated Person shall conclude the steps set out in R.1.4.184 on the date

specified by the Client, which, unless otherwise agreed between the Client and the Regulated Person, shall be at least six business days after the Regulated Person receives the Client's request.

- R.1.4.186 The requirement in R.1.4.184(b) shall only apply where the Client has:
- a. requested that the transfer be made; and
  - b. provided full details of the account opened or held with the other Payment Service Provider in another Member State, including any necessary details which are required by the Maltese Regulated Person in order to identify the new Payment Service Provider located in another Member State and the Payment Account opened or held by the Client with the new Payment Service Provider.
- R.1.4.187 Where outstanding obligations prevent the Maltese Regulated Person from closing the Payment Account in accordance with R.1.4.184(c), it shall immediately inform the Client.
- R.1.4.188 A Regulated Person shall communicate the following general information about Overdrafts to Clients who apply for a Payment Account, insofar as this is relevant to the account applied for:
- a. an explanation that an overdraft is a borrowing or credit facility;
  - b. a general description of the nature and principle features of arranged and unarranged overdrafts associated with the Payment Accounts offered by the Regulated Person;
  - c. a general explanation of the principle risks associated with:
    - i. overdrawing without prior arrangement; and
    - ii. opting out of an unarranged Overdraft facility (if the Regulated Person's terms and conditions permit this)
  - d. a general explanation of what may happen when a Client attempts to exceed an arranged overdraft limit or to overdraw in the absence of an arranged overdraft; and
  - e. a general explanation of how the use of an Overdraft might impact the Client's ability to be considered eligible for a Credit Agreement.

The information included in indents (a) to (e) must be presented together.

- R.1.4.189 When applying for a pre-arranged Overdraft together with the opening of a Payment Account, Regulated Persons shall also provide information about reductions in arranged Overdraft limits, including:
- a. Whether the Client can request the reduction or removal of their arranged Overdraft facility after the Payment Account has been opened;
  - b. How the Client can do this; and



Any limitations or conditions on the Client's ability to do this.

- R.1.4.190 Regulated Persons must also provide to Clients applying for a Payment Account an explanation of how alerts can assist in managing Overdraft use and associated costs.
- R.1.4.191 The information included in R.1.4.188 – R.1.4.190 shall also be made available to Clients who apply for an Overdraft facility whilst already holding a pre-existing Payment Account and in all instances should be communicated in writing and be concise, presented prominently and in clear and simple language.

## 4.4 Post-Contractual Disclosures

### 4.4.1 Statement of Fees

- R.1.4.192 Without prejudice to Articles 57 and 58 of [Directive \(EU\) 2015/2366](#) and Article 12 of [Directive 2008/48/EC](#) and as implemented and laid down in the Maltese laws transposing these Directives, a Regulated Person shall provide Clients, at least annually and free of charge, with a Statement of Fees incurred, as well as, where applicable, Information regarding the interest rates for services linked to a Payment Account. The content and presentation format of the Statement of Fees will be ensured by the same Regulated Person to be in accordance with the [Commission Implementing Regulation \(EU\) 2018/33](#), as implemented within this Chapter.
- R.1.4.193 Regulated Persons shall utilise the standardised template for the Statement of Fees indicated in Annex VIII and shall follow the order of Information, headings and sub-headings laid down in such template without modifying it other than provided for in this Section of the Rulebook.
- R.1.4.194 The method of communication used to provide the Statement of Fees shall be agreed with the Client and, upon the request of the Client, the Statement of Fees shall be provided on paper, free of charge.
- R.1.4.195 The Regulated Person must ensure that the Statement of Fees shall:
- a. state all fees incurred during the relevant period for services linked to a Payment Account;

- b. use the standardised terms contained in the list of the most representative services linked to a Payment Account (Annex VI), as issued and periodically updated by the MFSA;
- c. be accurate, not misleading, and expressed in the currency of the payment account or, if agreed by the Client and the Regulated Person, in another currency;
- d. include all penalties incurred related to the use of a Payment Account.

R.1.4.196 The Statement of Fees shall also specify at least the following Information:

- a. the unit fee charged for each service and the number of times the service was used during the relevant period;
- b. where the services are combined in a package:
  - i. the fee charged for the package as a whole;
  - ii. the number of times the package fee was charged during the relevant period; and
  - iii. the additional fee charged for any service exceeding the quantity covered by the package;
- c. the total amount of fees incurred during the relevant period for:
  - i. each service;
  - ii. each package of service provided; and
  - iii. services exceeding the quantity covered by the package fee;
- d. the Overdraft Facility interest rate or rates applied to the Payment Account during the relevant period, where applicable;
- e. the total amount of interest charged relating to the Overdraft Facility during the relevant period, where applicable;
- f. the credit interest rate or rates applied to the Payment Account during the relevant period, where applicable;
- g. the total amount of interest earned during the relevant period, where applicable; and
- h. the total amount of fees charged for all services provided during the relevant period.

R.1.4.197 The Statement of Fees should list packages of services separately and if packages are charged as part of a general fee, such packages should be displayed together with that fee.

R.1.4.198 With respect to presentational format, the Statement of Fees shall:

- a. be presented and laid out in a way that is clear and easy to read, using characters of a reasonable size;

- b. contain the title "Statement of Fees" at the top of the first page of the statement next to the common symbol to distinguish the document from other documentation; and
- c. be written in English and, if requested by the Client, in Maltese or, in any other language agreed upon by the Client and the Regulated Person.

R.1.4.199 Moreover, Regulated Persons shall ensure that the Statement of Fees template in Annex VIII is presented in line with the following rules:

- a. The Statement of Fees shall:
  - i. be presented in A4 portrait format;
  - ii. contain the title 'Statement of Fees' at the top of the first page, with the title centred and positioned between the logo of the Regulated Person at the top left-hand side of the document and the common symbol at the top right-hand side of the document;
  - iii. contain the common symbol of the size 2,5 cm × 2,5 cm and displayed as shown in the template laid down in Annex VIII;
  - iv. use font type Arial or another font type similar to Arial and font size 11, with exceptions for the title 'Statement of Fees', which uses font size 16 in bold type; font size 14 in bold type for the headings, and font size 12 in bold for the sub-headings, unless an increase in the font size or use of braille font type for visually impaired persons is either required or agreed between the Client and the Regulated Person;
  - v. be produced in black and white, with exception of the logo of the Regulated Person and the common symbol which may be presented in colour;
  - vi. contain the headings in semi-dark grey using the colour pattern with reference number 166,166,166 of the RGB colour model and the sub-headings in light-grey colour using the colour pattern with reference number 191,191,191 of the RGB colour model; and
  - vii. have its pages numbered.
- b. Where the common symbol is displayed in colour it shall follow the colour pattern with reference number 0/51/153 (hexadecimal: 003399) of the RGB colour model for the background and colour pattern 255/204/0 (hexadecimal: FFCC00) of the RGB colour model for the symbol.
- c. The logo of the Regulated Person shall be of an equivalent size to the size of the common symbol.

- d. The logo may only be displayed in colour if the common symbol is also displayed in colour. Where printed in black and white the common symbol shall be clearly readable.
- e. Regulated Persons shall replace indications between square brackets with the name of the account provider in bold type and left aligned.
- f. Regulated Persons shall replace indications between square brackets with their contact details, such as the geographical address, telephone number, e-mail address, fax number, web address and contact person/point that the Client may use for future correspondence. Those contact details shall be displayed left aligned.
- g. Regulated Persons shall replace indications between square brackets with the name of the Client. The name shall be displayed in bold type, left aligned.
- h. Regulated Persons shall replace indications between square brackets with the geographical address of the Client. The geographical address shall be displayed left aligned and, with the exception of the first letter of each word, in lower cases.
- i. Regulated Persons shall display the name of the Payment Account. That name shall be displayed in bold type, left aligned and directly after relevant words.
- j. Regulated Persons shall display details that identify the Payment Account, such as the Bank Identifier Code (BIC), the International Bank Account Number (IBAN), the national account number and national sort code. Those details shall be displayed left aligned.
- k. Regulated Persons shall display in the row 'period', left aligned, the calendar period that is covered by the statement of fees.
- l. Regulated Persons shall display in the row 'date', left aligned, the calendar date when they provide the Statement of Fees.
- m. The text of the introductory statement specified in the template under Annex VIII shall be reproduced as such in the statement of fees, using line spacing 1.15, 0 pt before and 10 pt after the text.

R.1.4.200 When completing the 'Summary of fees and interest' section in the statement of fees template under Annex VIII:

- a. Regulated Persons shall display in bold type and right aligned the total amounts of the fees and interests to be included in the four separate tables under 'Summary of fees and interest';

- b. Where interest is not applicable to a specific account, the Regulated Person shall use the wording 'interest not applicable', in lower case, right aligned;
- c. Where interest is applicable but, for the specific period, it amounts to zero, Regulated Persons shall indicate this by using '0' in the corresponding table; and
- d. Regulated Persons shall delete the 'comprehensive costs indicator' table.

- R.1.4.201 When completing the 'Detailed statement of fees paid on the account' table specified in the Statement of Fees template under Annex VIII, Regulated Persons shall:
- a. List all fees incurred in the relevant period for the corresponding services. Fees for provision or maintenance of the account shall be listed under sub-heading 'General account services';
  - b. Insert the services in the sub-column 'Service', left aligned, in bold type, using line spacing single, 0 pt before and 0 pt after each service;
  - c. Display in the sub-column 'Number of times the service was used' the number of times each service has been used during the relevant period of the Statement of Fees, right aligned, using the font type Arial or another font type similar to Arial and font size 11. Regulated Persons shall leave the sub-column 'Number of times the service was used' blank where a service has been used but the Regulated Person did not charge a fee for that service;
  - d. Display in the sub-column 'Unit fee' the unit fee structure and cost for each service used, right aligned;
  - e. Display in the sub-column 'Number of times the fee was charged' the number of times each service has been charged during the relevant period of the statement of fees, right aligned. Regulated Persons shall indicate this in the corresponding sub-column by using the wording 'fee not charged' where a service has been used but no fee has been charged;
  - f. Display in the sub-column 'Total' the resulting total amount of fees paid for using that service during the relevant period, in bold;
  - g. Where a sub-heading does not contain any service, delete that sub-heading. Regulated Persons shall also delete the sub-heading when the Client did not use any services beyond the quantities indicated in the package of services during the relevant period; and
  - h. Display the resulting total amount of fees paid by a Client during the relevant period in the row 'Total fees paid', in bold.

- R.1.4.202 In addition to R.1.4.201, where separate fees are charged in one or more of the following ways, Regulated Persons shall provide, in the 'Detailed statement of fees paid on the account' table, specifically in the 'Service' column of the respective service on a separate line, a description of each fee-charging instance, channel or condition ('types of fees'):
- a. for different fee-charging instances of the provision of the same service, such as an initial set-up fee and subsequent execution fees for the same service;
  - b. for different channels through which the same service is requested, used or provided, such as by phone, Branch or online;
  - c. depending on whether a specific condition for the same service is met, such as adherence to a minimum or maximum threshold amount for credit transfers or cash withdrawals;

The description shall be left aligned and the fees shall be displayed in the 'Unit fee' column right aligned.

Where fees are charged dependent on a combination of several types of fees, such as fees that differ by channel and are then further separated depending on whether a threshold amount is met, Regulated Persons shall, in addition to applying R.1.4.201(c), right-align the description of each additional type of fee.

Where the fee has changed during the relevant period, Regulated Persons shall list the fees applied during each period, by adding new lines to the 'Unit fee' column.

- R.1.4.203 With respect to packages of services linked to a payment account which are charged as part of the fees under the sub-heading 'General account services', as indicated in the template under Annex VIII:
- a. Regulated Persons shall include in the table 'Detailed statement of fees paid on the account' in the row on 'Package of services' the Information on the services included in the package in the column 'Service' and the number of the times the package was used in the column 'Number of times the service was used'. In the columns under 'Fee', Regulated Persons shall display the fee charged for the package as a whole, and the number of times the package fee was charged during the relevant period respectively, as set out in the previous Rule. The row shall be deleted if the package of services is charged separately from the fee for general account services;

- b. Any fee charged for any service exceeding the quantity covered by the package shall be disclosed in the table listing services and fees as referred to in Rules R.1.4.199 – R.1.4.202;
- c. If the number of services in the package is not limited, or where the quantities of services covered by the package have not been exceeded, Regulated Persons shall delete the statement at the bottom of the row specifying 'Services beyond these quantities have been charged separately'.

R.1.4.204 With respect to packages of services linked to a payment account which are charged separately from any fees under the sub-heading 'General account services' for general account services, as referred to in the table listing services and fees indicated in the template under Annex VIII:

- a. Regulated Persons shall include the following Information in the table on package of services:
  - i. in the column on package of services, the brand name, if applicable, or the content the package, by deleting the square brackets;
  - ii. in the 'Fee' column, the fee charged for the package as a whole for the period of the statement of fees, right aligned;
  - iii. in the third column, the number of times the package fee was charged during the relevant period.

Any additional fee charged for any service exceeding the quantity covered by the package fee shall be disclosed in the table on service and fees as referred to in R.1.4.201 and R.1.4.202;

- b. Where the package is charged with regular frequency, the frequency shall be displayed in the 'Fee' column and left aligned, with the total annual cost displayed on the line directly underneath the frequency, in bold type and using the wording 'Total annual cost';
- c. Where different packages incur different fees during the relevant period, the Information listed in (a) shall be provided for each package in a separate table;
- d. Regulated Persons shall delete the entire table, including the heading 'Detail of the fees included in the package of service', if a package of services is not provided with the account or if the package of services offered with the account is charged as part of the fee for any general account services;
- e. Where the number of all services in the package is not limited, or where quantities of services covered by the package of services have not been exceeded, Regulated Persons shall delete the statement at



the bottom of the table that reads 'Services beyond these quantities have been charged separately'.

- R.1.4.205 When completing the 'Detail of interest paid on the account' table specified in the statement of fees template under Annex VIII, Regulated Persons shall:
- a. Display the interest paid by the Client during the period covered by the statement of fees, where applicable.
  - b. Display the interest rate in the column 'Interest rate' and as a percentage applied on an annual basis. If the interest rate has changed during the relevant period, Regulated Persons shall list each interest rate that applied during each period on a separate line.
  - c. Regulated Persons shall display in the column 'Interest' the interest paid by a Client, expressed in the currency of the account, in bold. If the interest rate has changed during the relevant period, Regulated Persons shall show the interest paid by the Client separately for each of the relevant periods, each on a separate line.
  - d. Display the resulting total amount of interest paid by the Client during the relevant period, in bold, in row 'Total interest paid'.
  - e. Utilise the words 'interest not applicable', in lower case, left aligned, in bold, in the row 'Total interest paid' where no interest is paid by a Client because no interest is applicable to the account.
- R.1.4.206 When completing the 'Detail of interest earned on the account' table specified in the statement of fees template under Annex VIII, Regulated Persons shall:
- a. Display the interest earned by the Client during the period covered by the statement of fees, where applicable;
  - b. Replace 'Account name' with the name of the relevant account, in bold;
  - c. Display the interest rate in the column 'Interest rate' and as a percentage applied on an annual basis. If the interest rate changed during the relevant period, Regulated Persons shall list each interest rate that applied during each period on a separate line;
  - d. Display in the column 'Interest' the interest earned by a Client, expressed in the currency of the account, in bold, in the column 'Interest'. If the interest rate has changed during the period covered by the statement of fees, Regulated Persons shall show the interest earned by the payment account holder separately for each of the relevant periods, each on a separate line. Where interest rate is

applicable but, for the specific period, it amounts to zero, Payment Service Providers shall display '0' in the column 'Interest';

- e. Utilise the words 'interest not applicable', in lower case, left aligned, in the column 'Interest' where a particular account does not pay the interest because no interest is applicable to the account;
- f. Display in the row 'Total interest earned' the resulting total amount of interest earned by the Client during the period covered by the statement of fees, in bold;
- g. Utilise the words 'interest not applicable', in lower case, left aligned, in bold, in the row 'Total interest earned' where a particular account does not pay the interest because no interest is applicable to the account.

R.1.4.207 When completing the 'Additional Information' table in the statement of fees template under Annex VIII, Regulated Persons shall:

- a. Display any additional Information that goes beyond the Information covered under R.1.4.199 – R.1.4.206 and that is directly related to the services or fees paid or interest charged or earned, or interest rates applied during the period covered by the statement of fees. The additional Information displayed in this table shall include any Information required by any other legislative or regulatory provision applicable to the Regulated Person;
- b. Follow the presentation format set out in previous Rules under this section of the Rulebook; and
- c. Delete the table should they not provide Information of the kind specified under (a) above.

R.1.4.208 Where a brand name is used throughout the Statement of Fees, it shall follow directly after the name of the service, utilising font type Arial or another font type similar to Arial and font size 11, as well as square brackets.

R.1.4.209 Where the Statement of Fees is provided by electronic means, Regulated Persons may, provided that at the same time the Client is provided with a copy of the Statement of Fees document in line with the template laid down in Annex VIII and completed as set out above, modify the template in only the following ways:

- a. increase the font sizes, provided that the proportion of sizes set out in R.1.4.199(a) is retained;
- b. where the dimensions of the electronic tools are such that using several tables and columns would make the statement of fees

- difficult to read, use a single column or a single table if the order of Information, headings and sub-headings are retained;
- c. use electronic tools, such as layering and pop-ups, provided that the title of the statement of fees, the common symbol, introductory statements, headings and sub-headings, are displayed prominently and the order of Information is retained.

In any case, the use of the electronic tools shall not be intrusive that it could distract the Client from the Information in the Statement of Fees. Information provided through layering and pop-ups shall be limited to the Information referred to in this Section of the Rulebook.

- R.1.4.210 The Statement of Fees shall be provided together with any Information required pursuant to other European Union or national legislation on payment accounts and related services.

#### 4.4.2 Other Disclosures

- R.1.4.211 Regulated Persons shall offer a switching service as defined in this Rulebook between payment accounts held in the same currency to any Client who opens or holds a payment account with a Regulated Person.

In doing so, the Regulated Person shall make available to Clients the following Information about the switching service:

- a. the roles of the transferring and receiving Payment Service Provider for each step of the switching process;
  - b. the timeframes for completion of the respective steps;
  - c. any fees that shall be charged for the switching process;
  - d. any Information that the Client will be asked to provide;
  - e. the available alternative dispute resolution procedures.
- R.1.4.212 The Information referred to in R.1.4.211 shall:
- a. be made available free of charge, on paper or another Durable Medium, at all premises of the Regulated Person accessible to Clients;
  - b. be available in electronic form on the Regulated Person's website at all times; and
  - c. be provided to Clients upon request.

Regulated Persons shall also make available such Information required pursuant to other European Union or national legislation on Payment Accounts and related services.

- R.1.4.213 A switching service shall be initiated by the receiving Payment Service Provider at the request of the Client and shall meet the requirements set out in R.1.4.214 to R.1.4.219 below together with the requirements under R.1.4.211 and R.1.4.212 above.
- R.1.4.214 Regulated Persons must abide with the following requirements regarding the authorisation process of a switching service:
- a. The receiving Payment Service Provider shall perform the switching service upon receipt of the authorisation from the Client, which shall be in such form as may be suggested by the receiving Payment Service Provider.
  - b. In the case of two or more holders of the same account, the authorisation referred to in paragraph (a) above shall be obtained from each of such holders.
  - c. The authorisation shall be drawn up in Maltese or English and, if requested by the Client, in Maltese or, in any other language agreed upon by the Client and the Regulated Person.
  - d. The authorisation shall allow the Client to:
    - i. provide specific consent to the performance by the transferring Payment Service Provider of each of the tasks set out in R.1.4.215(a) to (f);
    - ii. provide specific consent to the performance by the receiving Payment Service Provider of each of the tasks referred to in R.1.4.217(a)(i) to (vii);
    - iii. specifically identify incoming credit transfers, standing orders for credit transfers and direct debit mandates that are to be switched; and
    - iv. specify the date from which standing orders for credit transfers and direct debits are to be executed from the Payment Account opened or held with the receiving Payment Service Provider.
  - e. The date specified in accordance with paragraph (d)(iv) above shall be at least six business days after the date on which the receiving Payment Service Provider receives the documents transferred from the transferring Payment Service Provider in accordance with R.1.4.216(a)(i).
  - f. The receiving Payment Service Provider shall require the authorisation from the Client to be in writing and that a copy of the authorisation be provided to the Client.

R.1.4.215 In cases of a request from the receiving Payment Service Provider, within two business days from receipt of the authorisation referred to in R.1.4.214, the receiving Payment Service Provider shall request that the transferring Payment Service Provider carry out each of the following tasks, if provided for in the Client's authorisation:

- a. transmission to the receiving Payment Service Provider and, if specifically requested by the Client, to the Client, of a list of the existing standing orders for credit transfers and available information on direct debit mandates that are being switched;
- b. transmission to the receiving Payment Service Provider and, if specifically requested by the Client, to the Client, of the available information about recurring incoming credit transfers and Regulated Person-driven direct debits executed on the Client's Payment Account during the previous thirteen months;
- c. where the transferring Payment Service Provider does not provide a system for automated redirection of the incoming credit transfers and direct debits to the Payment Account held by the Client with the receiving Payment Service Provider, stop accepting direct debits and incoming credit transfers with effect from the date specified in the authorisation;
- d. cancellation of standing orders with effect from the date specified in the authorisation;
- e. transfer of any remaining positive balance to the Payment Account opened or held with the receiving Payment Service Provider on the date specified by the Client; and
- f. closure of the account held by the Client with the transferring Payment Service Provider on the date specified by the Client.

R.1.4.216 With respect to tasks for the transferring Payment Service Provider, the Regulated Person shall ensure that:

- a. Upon receipt of a request from the receiving Payment Service Provider, the transferring Payment Service Provider shall carry out the following tasks, if provided for in the Client's authorisation:
  - i. send the information described in R.1.4.215(a) and (b) to the receiving Payment Service Provider within five business days;
  - ii. where the transferring Payment Service Provider does not provide a system for automated redirection of incoming credit transfers and direct debits to the Payment Account held or opened by the Client with the receiving Payment Service Provider, stop accepting incoming credit transfers and direct debits on the Payment Account with effect from the date specified in the authorisation;

- iii. cancel standing orders from the date specified in the authorisation;
  - iv. transfer any remaining positive balance from the Payment Account to the Payment Account opened or held with the receiving Payment Service Provider on the date specified in the authorisation;
  - v. close the Payment Account on the date specified in the authorisation if the Client has no outstanding obligations on that Payment Account and the actions described in sub-paragraphs (i), (ii), and (iv) have been completed.
- b. Where any outstanding obligations on the Payment Account prevent closure of the account in accordance with sub-paragraph (a)(v), the transferring Payment Service Provider shall immediately inform the Client that this is the case.
- c. Where the transferring Payment Service Provider stops accepting incoming credit transfers and direct debits in accordance with sub-paragraph (a)(ii), it shall inform the payer and the payee in writing and within five business days, of the reason for not completing the payment transaction.

R.1.4.217 With respect to tasks for the transferring Payment Service Provider, the Regulated Person shall ensure that:

- a. Within five business days of receipt of the information requested from the transferring Payment Service Provider as referred to in R.1.4.215, the receiving Payment Service Provider shall, if provided for in the authorisation and to the extent that the information provided by the transferring Payment Service Provider or the Client enables the receiving Payment Service Provider to do so, carry out the following tasks:
  - i. set up the standing orders for credit transfers requested by the Client and execute them with effect from the date specified in the authorisation;
  - ii. make any necessary preparations to accept direct debits and accept them with effect from the date specified in the authorisation;
  - iii. where relevant, inform Clients of their rights in accordance with Article 5(3)(d) of [Regulation \(EU\) 260/2012](#) which establishes technical and business requirements for credit transfers and direct debits in euro;
  - iv. inform payers specified in the authorisation and making recurring incoming credit transfers into a Client's payment account of the details of the Client's payment account with the receiving Payment Service Provider and transmit to such payers a copy of the Client's authorisation;

- v. where the receiving Payment Service Provider does not have all the information it needs to complete the task referred to in indent (iv), ask the Client or the transferring Payment Service Provider to provide the missing information;
  - vi. inform payees specified in the authorisation and using a direct debit to collect funds from the Client's Payment Account of the details of the Client's Payment Account with the receiving Payment Service Provider and the date from which direct debits are to be collected from that Payment Account and transmit to such payees a copy of the Client's authorisation;
  - vii. where the receiving Payment Service Provider does not have all the information that it needs to inform the payees, it shall ask the Client or the transferring Payment Service Provider to provide the missing information.
- b. Where the Client chooses to personally provide the information referred to in paragraph(a)(iv) or (vi) to the payers or payees rather than provide specific consent in accordance with R.1.4.214 allowing the receiving Payment Service Provider to do so, the receiving Payment Service Provider shall provide the Client with standard letters providing details of:
- i. the payment account; and
  - ii. the starting date specified in the authorisation within the deadline referred to in paragraph (a).
- c. Any requirements imposed on the receiving Payment Service Provider shall start to apply when such Payment Service Provider has all information and documentation necessary to discharge its duties under this section.
- d. The transferring Payment Service Provider shall not block any payment instrument before the date specified in the Client's authorisation, so that the provision of payment services to the Client is not interrupted in the course of the provision of the switching service.

- R.1.4.218 In relation to fees connected with the switching service, Regulated Persons must ensure that:
- a. Transferring and receiving Payment Service Providers shall provide the Client with access, free of charge, to personal information regarding any existing standing orders and direct debits applicable to the accounts the Client holds with them;
  - b. The transferring Payment Service Provider shall not charge the Client or the receiving Payment Service Provider for the provision of information requested from it by the receiving Payment Service Provider in accordance with R.1.4.215(a) and (b);



- c. Any fee payable by the Client applied by the transferring Payment Service Provider in respect of the termination of the framework contract for the Payment Account held with the transferring Payment Service Provider shall be determined in accordance with Article 45(2), (4) and (6) of Directive 2007/64/EC;
- d. Transferring or receiving Payment Service Providers may charge the Client a fee for any service referred to in R.1.4.215 to R.1.4.217, other than those referred to in paragraph (a) to (c) of this Rule, provided that any such fee is:
  - i. reasonable; and
  - ii. in line with the actual costs to the Payment Service Provider of providing the relevant service.

R.1.4.219 With respect to financial loss to Clients, Regulated Persons must ensure that:

- a. Subject to sub-paragraph (b), where a Client suffers any financial loss, as a direct result of the non-compliance of a Payment Service Provider with any requirement provided for in R.1.4.215 to R.1.4.217, that Payment Service Provider shall reimburse the full extent of the loss, including charges and interest, without delay.
- b. The duty to reimburse provided for in paragraph (a) shall not apply in the case of unavoidable losses arising as a result of:
  - i. abnormal and unforeseeable circumstances beyond the control of the Payment Service Provider pleading for the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary; or
  - ii. the Payment Service Provider's compliance with other legal obligations pursuant to other European Union or national legislative acts.

## 4.5 Other Provisions for Regulated Persons offering Payment Accounts

R.1.4.220 Regulated Persons shall ensure that the provisions in this Section relating to the fee Information document (Annex VII) and the statement of fees (Annex VIII) apply *mutatis mutandis* in regard to payment accounts with basic features.

R.1.4.221 A Regulated Person may utilise brand names in the fee Information document (Annex VII) and the statement of fees (Annex VIII), provided

that such brand names are used in addition to the standardised terms set out in the list of the most representative services linked to a payment account as issued and periodically updated by the MFSA, and as a secondary designation of those services.

## Section 5: Rules applicable to Regulated Persons offering Deposit Accounts

### 5.1 Applicability

R.1.5.222 The Rules under this Section shall only apply to accounts in so far as they cannot be considered as Payment Accounts capable of undertaking day-to-day payment transactions. To this end, the term 'Deposit Accounts' shall include 'fixed term savings/deposit accounts' and other 'savings accounts' which cannot undertake day-to-day payment transactions.

Specific rules covering Payment Accounts are considered under Section 4 of this Chapter.

### 5.2 General Requirements

R.1.5.223 Regulated Persons offering all forms of Deposit Accounts shall provide detailed Information about the application process for the opening of such account. This Information shall include an application form, as well as a list of any documents required to be submitted with the application. Such Information shall be made available online on the Regulated Person's website and, if so requested by the Client, on a Durable Medium, free of charge. It shall be the duty of the Regulated Person to keep such Information updated at all times.

R.1.5.224 Regulated Persons must also publish information about whether it is possible to open an account:

- a. without visiting a Branch;
- b. where no visit to a Branch is required, without an appointment;

- c. on the basis of documents and information supplied in electronic form; and
- d. by post.

R.1.5.225 Regulated Persons shall disclose the average number of days it shall take to complete each of the following actions:

- a. Generating a working account number for the Client; and
- b. Enabling internet banking facilities to a Client who requests it as part of their application to open an account or for whom the provision of Internet Banking is a term or condition of the account contract.

R.1.5.226 Regulated Persons shall provide the following information on paper or in another Durable Medium in good time before a Client is bound by the terms and conditions of a Deposit Account:

- a. The name of the Deposit Account;
- b. The rate or rates of applicable interest. Where different interest rates apply in different circumstances, an explanation of the circumstances in which each of the different rate applies should be provided. Where an interest rate automatically tracks a reference interest rate the following should be made available:
  - i. A statement that this is the case, identifying the reference interest rate;
  - ii. An explanation of how the applicable interest rate is calculated on the basis of the reference interest rate;
  - iii. An explanation of how the Client can access and monitor the level of the reference interest rate from time to time, including a website link to where the latest reference interest rate can be found;
- c. The times at which interest payments are calculated and credited to the Deposit Account;
- d. Whether or not the Regulated Person has the right to change the rate or rates of interest. Where the Regulated Person has such right, it should include brief details of the circumstances in which that right may be exercised and how and when notice of the change will be provided;
- e. One or more projections of the future balance of the Deposit Account, which provides a representative illustration of the cash returns that the account will generate;
- f. Details of any eligibility criteria that apply to the Deposit Account, including a brief description of how to open the Deposit Account and a reference to any service available that enables a Client to switch to the Deposit Account;
- g. The relevant amount to be deposited when a minimum amount is required to open such account;

- h. Whether a minimum amount must be deposited in the Deposit Account on a regular basis and, if so, that amount, the frequency with which it must be paid, and any consequences of not doing so;
- i. Whether a maximum amount may be deposited in the Deposit Account in any specified period of time and, if so, the amount and the period;
- j. Whether there is a maximum amount that may be held in the Deposit Account and, if so, that amount; and
- k. An explanation of how funds may be withdrawn from the Deposit Account, including any conditions or consequences for making withdrawals. For fixed-term Deposit Accounts, an explanation of what happens at the end of the fixed term should also be provided.

- R.1.5.227 A Regulated Person should ensure that the rate of interest that applies to a Deposit Account is prominently shown alongside, or in close proximity to any account balance information included in:
- a. any paper or online statement of account provided or made available by the Regulated Person;
  - b. where the Regulated Person provides an online banking service to the Client, on the first personalised page of the relevant website that the Client accesses when using this service;
  - c. any notification of a material change to the rate of interest;
  - d. any notification of the expiry of an introductory, promotional or preferential rate of interest; and
  - e. any notification of the expiry of a fixed term of a fixed term Deposit Account.

- R.1.5.228 For the purposes of R.1.5.227:
- a. the Regulated Person should show the rate of interest that applies to the Deposit Account as a numerical figure (and not merely the method for determining the current figure under the terms and conditions). However, where the rate of interest that applies to the Deposit Account automatically tracks a reference interest rate, the Regulated Person should indicate how the rate of interest is calculated and direct the Client to where the level of the reference interest rate may be accessed from time to time; and
  - b. in the case of account balance information made available online, the Regulated Person should show the rate of interest that applies to the account at the time the Client accesses the information; or in the case of account balance information provided in a durable medium, the Regulated Person should show the rate of interest that applies to the account at the time the information is sent.

- R.1.5.229 At the request of the Client, a Regulated Person should provide information about the current rate of interest that applies to a Deposit Account in any of the following means agreed upon by the Client and the Regulated Person:
- a. through any of the internet banking facilities provided by the Regulated Person to which the Client is subscribed,
  - b. by telephone,
  - c. by email, where the Client is able to provide an active email address;  
or
  - d. in one of the Regulated Person's Branches.
- R.1.5.230 Regulated Persons should publish the current rate of interest that applies to each Deposit Account it provides on its website (whether or not the account is available to new Clients) and ensure that this is kept continuously up to date and is easily accessible by all Clients.
- R.1.5.231 In relation to a Deposit Account which takes the form of a fixed-term savings account, Regulated Persons should provide notice of the expiry of the fixed term to the Client on paper or in another Durable Medium in good time before the end of the fixed term. This notice should explain, in easily understandable language and in a clear and comprehensible form:
- a. the consequences of the expiry of the fixed term, including whether the Regulated Person proposes to transfer the balance of the account to another fixed-term savings account if the Client does not provide further instructions to the Regulated Person while it has an opportunity to do so; and
  - b. the options available to the Client for dealing with the balance in the fixed term savings account, including when and how these options may be exercised.
  - c. If maturity instructions were already provided at account opening stage by the Client to the Regulated Person, an expiry notice is still to be provided to the client in case such maturity instructions need to be amended.
- R.1.5.232 In relation to all Deposit Accounts, a Regulated Person must at least annually provide to a Client:
- a. a statement of the account which includes, where applicable:
    - i. the opening balance;
    - ii. all additions;
    - iii. all withdrawals;
    - iv. all interest credited;
    - v. all charges;
    - vi. the closing balance;

- vii. details of the interest rate(s) applied to the account during the period covered by the statement; and
  - viii. where tax is deducted from interest credited, Information on the tax deducted or on how Clients may obtain a certificate detailing the tax paid.
- b. details of interest rates applied to other similar accounts available to the Client from that Regulated Person; and
  - c. where the term of the account is less than one year, the Regulated Person must provide to the Client a closing statement which contains this Information.

R.1.5.233 A Regulated Person must ensure that at least 10 business days prior to the maturity of a fixed term deposit, it alerts the Client about its impending maturity and the maturity date. This Rule does not apply where the maturity date of the fixed term deposit is less than 30 days.



## Annex I – Calculation of the APRC for Credit Agreements relating to Residential Immovable Property

I. Basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other.

The basic equation, which establishes the annual percentage rate of charge (APRC), equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, i.e.:

$$\sum_{k=1}^m C_k(1+X)^{-t_k} = \sum_{l=1}^{m'} D_l(1+X)^{-S_l}$$

where:

X is the APR,

m is the number of the last drawdown,

k is the number of a drawdown, thus  $1 \leq k \leq m$ ,

$C_k$  is the amount of drawdown k,

$t_k$  is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus  $t_1 = 0$

$m'$  is the number of the last repayment or payment of charges,

l is the number of a repayment or payment of charges,

$D_l$  is the amount of a repayment or payment of charges,

$S_l$  is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks:

(a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.

(b) The starting date shall be that of the first drawdown.

(c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30.41666 days (i.e.  $365/12$ ) regardless of whether or not it is a leap year.

Where intervals between dates used in the calculations cannot be expressed as a whole number of weeks, months or years, the intervals shall be expressed as a whole number of one of those periods in combination with a number of days. Where using days:

- (i) every day shall be counted, including weekends and holidays;
- (ii) equal periods and then days shall be counted backwards to the date of the initial drawdown;



## Annex II – European Standardised Information Sheet (ESIS)

### EUROPEAN STANDARDISED INFORMATION SHEET (ESIS)

#### PART A

The text in this model shall be reproduced as such in the ESIS. Indications between square brackets shall be replaced with the corresponding information. Instructions for the creditor or, where applicable, credit intermediary on how to complete the ESIS are provided in Part B.

Wherever the words 'where applicable' are indicated, the creditor shall provide the information required if it is relevant to the credit agreement. Where the information is not relevant, the creditor shall delete the information in question or the entire section (for example, in cases where the section is not applicable). Where the entire section is deleted, the numbering of the ESIS sections shall be adjusted accordingly.

The information below shall be provided in a single document. The font used shall be clearly readable. Bold font, shading or larger font sizes shall be used for the information elements to be highlighted. All applicable risk warnings shall be highlighted.

#### ESIS Model

(Introductory text)

This document was produced for [name of consumer] on [current date].

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.

The information below remains valid until [validity date], (where applicable) apart from the interest rate and other costs. After that date, it may change in line with market conditions.

(Where applicable) This document does not constitute an obligation for [name of creditor] to grant you a loan.

1. Lender

[Name]

[Telephone number]

[Geographical address]

(Optional) [E-mail address]

(Optional) [Fax number]

(Optional) [Web address]

(Optional) [Contact person/point]

(Where applicable information as to whether advisory services are being provided:) [(We recommend, having assessed your needs and circumstances, that you take out this mortgage./We are not recommending a particular mortgage for you. However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice.)]

## Annex III – Calculation of the APRC for Consumer Credit Agreements

I. The basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other.

The basic equation, which establishes the annual percentage rate of charge (APR), equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, i.e.:

$$\sum_{k=1}^m C_k(1+X)^{-t_k} = \sum_{l=1}^{m'} D_l(1+X)^{-S_l}$$

Where:

- $\Sigma$  is the APR,
- $m$  is the number of the last drawdown,
- $k$  is the number of a drawdown, thus  $1 \leq k \leq m$ ,
- $C_k$  is the amount of drawdown  $k$ ,
- $t_k$  is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus  $t_1 = 0$ ,
- $m'$  is the number of the last repayment or payment of charges,
- $l$  is the number of a repayment or payment of charges,
- $D_l$  is the amount of a repayment or payment of charges,
- $S_l$  is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks:

- (a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.
- (b) The starting date shall be that of the first drawdown.
- (c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30.41666 days (i.e. 365/12) regardless of whether or not it is a leap year.
- (d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one.
- (e) The equation can be rewritten using a single sum and the concept of flows ( $A_k$ ), which will be positive or negative, in other words either paid or received during periods 1 to  $k$ , expressed in years, i.e.:

$$S = \sum_{k=1}^n A_k(1+X)^{-t_k}$$



I. The basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other.

The basic equation, which establishes the annual percentage rate of charge (APR), equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, i.e.:

$$\sum_{k=1}^m C_k(1 + X)^{-t_k} = \sum_{l=1}^{m'} D_l(1 + X)^{-S_l}$$

Where:

- $\Sigma$  is the APR,
- $m$  is the number of the last drawdown,
- $k$  is the number of a drawdown, thus  $1 \leq k \leq m$ ,
- $C_k$  is the amount of drawdown  $k$ ,
- $t_k$  is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus  $t_1 = 0$ ,
- $m'$  is the number of the last repayment or payment of charges,
- $l$  is the number of a repayment or payment of charges,
- $D_l$  is the amount of a repayment or payment of charges,
- $S_l$  is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks:

- (a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.
- (b) The starting date shall be that of the first drawdown.
- (c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30.41666 days (i.e. 365/12) regardless of whether or not it is a leap year.
- (d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one.
- (e) The equation can be rewritten using a single sum and the concept of flows ( $A_k$ ), which will be positive or negative, in other words either paid or received during periods 1 to  $k$ , expressed in years, i.e.:

$$S = \sum_{k=1}^n A_k(1 + X)^{-t_k}$$

- (ii) if the date of conclusion of the credit agreement is not known, the date of the initial drawdown shall be assumed to be the date which results in the shortest interval between that date and the date of the first payment to be made by the consumer.
- (g) Where the date or amount of a payment to be made by the consumer cannot be ascertained on the basis of the credit agreement or the assumptions set out in paragraphs (d), (e) or (f), it shall be assumed that the payment is made in accordance with the dates and conditions required by the creditor and, when these are unknown:
  - (i) interest charges are paid together with the repayments of capital;
  - (ii) a non-interest charge expressed as a single sum is paid at the date of the conclusion of the credit agreement;
  - (iii) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall be assumed to be equal amounts;
  - (iv) the final payment clears the balance of capital, interest and other charges, if any.
- (h) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 1500.
- (i) If different borrowing rates and charges are offered for a limited period or amount, the borrowing rate and the charges shall be deemed to be the highest rate for the whole duration of the credit agreement.
- (j) For consumer credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator, the calculation of the annual percentage rate shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculating the annual percentage rate, based on the value of the agreed indicator at that time.



## Annex IV – Standard European Consumer Credit Information Form (SECCI)

### 1. Identity and contact details of the creditor/credit intermediary

<b>Creditor</b> Address Telephone Number (*) E-mail address (*) Fax Number (*) Web address (*)	[Identity] Geographical address to be used by the consumer
<b>If applicable</b> Credit Intermediary Address Telephone Number (*) E-mail address (*) Fax Number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]

(\*) This information is optional for the creditor.

Wherever "if applicable" is indicated, the creditor must fill in the box if the information is relevant to the credit product or delete the respective information or the entire row if the information is not relevant for the type of credit considered.

Indications between square brackets provide explanations for the creditor and must be replaced with the corresponding information.

### 2. Description of the main features of the credit product

The type of credit	
The total amount of credit <i>This means the ceiling or the total sums made available under the credit agreement</i>	
The conditions governing the drawdown <i>This means how and when you will obtain the money</i>	
The duration of the credit agreement	
Instalments and, where appropriate, the order in which the instalments will be allocated	You will have to pay the following: [The amount, number and frequency of payments to be made by the consumer] Interest and/or charges will be payable in the following manner:
The total amount you will have to pay <i>This means the amount of borrowed capital plus interest and possible costs related to your credit.</i>	[Sum of total amount of credit and total cost of credit]
If applicable The credit is granted in the form of a deferred payment for a good or service or is linked to the supply of specific goods or the provision of a service Name of good/service Cash price	
If applicable Sureties required <i>This is a description of the security to be provided by you in relation to the credit agreement.</i>	[Kind of Sureties]



If applicable <i>Repayments do not give rise to immediate amortisation of the capital.</i>	
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### 3. Costs of the credit

The borrowing rate or, if applicable, different borrowing rates which apply to the credit agreement	[ % - fixed or, - variable (with the index or reference rate applicable to the initial borrowing rate), - periods],
Annual Percentage Rate of Charge (APR) This is the total cost expressed as an annual percentage of the total amount of credit. The APR is there to help you compare different offers.	[ % A representative example mentioning all the assumptions used for calculating the rate to be set out here]
Is it compulsory, in order to obtain the credit or to obtain it on the terms and conditions marketed, to take out - an insurance policy securing the credit, or - another ancillary service contract	Yes/No [if yes specify the kind of insurance] Yes/No [if yes specify the kind of ancillary service]
If the costs of these services are not known by the creditor they are not included in the APR. Related Costs	
If applicable Maintaining one or more accounts is required for recording both payments transactions and drawdowns	
If applicable Amount of costs for using a specific means of payment (e.g. credit card)	
If applicable Any other costs deriving from the credit agreement	
If applicable Conditions under which the above mentioned costs related to the credit agreement can be changed	
If applicable Obligation to pay notarial fees	
Costs in the case of late payments <i>Missing payments could have severe consequences for you (e.g. forced sale) and make obtaining credit more difficult.</i>	You will be charged [..... (applicable interest rate and arrangements for its adjustment and, where applicable, default charges)] for missing payments.

### 4. Other important legal aspects

Right of Withdrawal <i>You have the right to withdraw from the credit agreement within a period of 14 running days.</i>	Yes/No
Early Repayment You have the right to repay the credit early at any time in full or partially.	
If applicable The creditor is entitled to compensation in the case of early repayment.	[Determination of the compensation (calculation method) in accordance with the provisions implementing regulation 16 of the Consumer Credit Regulations, 2010.

<p><b>Consultation of a database</b>  <i>The creditor must inform you immediately and without charge of the result of a consultation of a database, if a credit application is rejected on the basis of such a consultation. This does not apply if the provision of such information is prohibited by European Community law or is contrary to objectives of public policy or public security.</i></p>	
<p><b>Right to a draft agreement</b>  <i>You have the right, upon request, to obtain a copy of the draft credit agreement free of charge. This provision does not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with you.</i></p>	
<p><b>If applicable</b>  The period of time during which the creditor is bound by the pre-contractual information</p>	This information is valid from ... until ...

If applicable

5. Additional information in the case of distance marketing of financial services

<p>(a) concerning the creditor</p>	
<p><b>If applicable</b>  Representative of the creditor in your Member State of residence  Address  Telephone Number (*)  E-mail address (*)  Fax Number (*)  Web address (*)</p>	<p>[Identity]  [Geographical address to be used by the consumer]</p>
<p><b>If applicable</b>  Registration</p>	<p>[The trade register in which the creditor is entered and his registration number or an equivalent means of identification in that register]</p>
<p><b>If applicable</b>  The supervisory authority</p>	
<p>(b) concerning the credit agreement</p>	
<p><b>If applicable</b>  Exercise of the right of withdrawal</p>	<p>[Practical instructions for exercising the right of withdrawal indicating, inter alia, the period for exercising the right, the address to which notification of exercise of the right of withdrawal should be sent and the consequences of non-exercise of that right]</p>
<p>The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract</p>	
<p><b>If applicable</b>  Clause stipulating the governing law applicable to the credit agreement and/or the competent court</p>	<p>[Relevant Clause to be set out here]</p>
<p><b>If applicable</b>  Language regime</p>	<p>Information and contractual terms will be supplied in [specific language]. With your consent, we intend to communicate in [specific language/languages] during the duration of the credit agreement.</p>
<p>(c) concerning redress</p>	



Existence of and access to out-of-court complaint and redress mechanism	[Whether or not there is an out-of-court complaint and redress mechanism for the consumer who is party to the distance contract and, if so, the methods of access to it]
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(\* This information is optional for the creditor.

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## Annex V – European Consumer Credit Information Form

- (1) overdrafts
- (2) debt conversion

### 1. Identity and contact details of the creditor/credit intermediary

Creditor Address Telephone Number (*) E-mail address (*) Fax Number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]
If applicable Credit Intermediary Address Telephone Number (*) E-mail address (*) Fax Number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]

(\*) This information is optional for the creditor.

Wherever "if applicable" is indicated, the creditor must fill in the box if the information is relevant to the credit product or delete the respective information or the entire row if the information is not relevant for the type of credit considered.

Indications between square brackets provide explanations for the creditor and must be replaced with the corresponding information.

### 2. Description of the main features of the credit product

The type of credit	
The total amount of credit <i>This means the ceiling or the total sums made available under the credit agreement</i>	
The duration of the credit agreement	
If applicable You may be requested to repay the amount of credit in full on demand at any time.	

### 3. Costs of the credit

The borrowing rate or, if applicable, different borrowing rates which apply to the credit agreement	[% - fixed or, - variable (with the index or reference rate applicable to the initial borrowing rate)]
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<p>If applicable Annual Percentage Rate of Charge (APR) This is the total cost expressed as an annual percentage of the total amount of credit. The APR is there to help you compare different offers.</p>	<p>[ % A representative example mentioning all the assumptions used for calculating the rate to be set out here]</p>
<p>If applicable Costs If applicable The conditions under which those costs may be changed</p>	<p>[The costs applicable from the time the credit agreement is concluded]</p>
<p>Costs in the case of late payments</p>	<p>You will be charged [..... (applicable interest rate and arrangements for its adjustment and, where applicable, default charges)] for missing payments.</p>

#### 4. Other important legal aspects

<p>Termination of the credit agreement</p>	<p>[The conditions and procedure for terminating the credit agreement]</p>
<p>Consultation of a database <i>The creditor must inform you immediately and without charge of the result of a consultation of a database, if a credit application is rejected on the basis of such a consultation. This does not apply if the provision of such information is prohibited by European Community law or is contrary to objectives of public policy or public security.</i></p>	
<p>If applicable The period of time during which the creditor is bound by the pre-contractual information</p>	<p>This information is valid from ... until ...</p>

If applicable

5. Additional information to be given where the precontractual information relates to a consumer credit for debt conversion.

<p>Instalments and, where appropriate, the order in which the instalments will be allocated</p>	<p>You will have to pay the following: [Representative example of an instalment table including the amount, number and frequency of payments to be made by the consumer]</p>
<p>The total amount you will have to pay</p>	
<p>Early Repayment <i>You have the right to repay the credit early at any time in full or partially.</i> If applicable The creditor is entitled to compensation in the case of early repayment.</p>	<p>[Determination of the compensation (calculation method) in accordance with the provisions implementing Regulation 16 of the Consumer Credit Regulations, 2010]</p>

If applicable

6. Additional information in the case of distance marketing of financial services

<p>(a) concerning the creditor</p>	
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If applicable Representative of the creditor in your Member State of residence Address Telephone Number (*) E-mail address (*) Fax Number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]
If applicable Registration	[The trade register in which the creditor is entered and his registration number or an equivalent means of identification in that register]
If applicable The supervisory authority	
(b) concerning the credit agreement	
Right of withdrawal <i>You have the right to withdraw from the credit agreement within a period of 14 running days</i> If applicable Exercise of the right of withdrawal	Yes/No [Practical instructions for exercising the right of withdrawal indicating, inter alia, the address to which notification of the exercise of withdrawal should be sent and the consequences of non-exercise of that right]
If applicable The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract	
If applicable Clause stipulating the governing law applicable to the credit agreement and/or the competent court	[Relevant Clause to be set out here]
If applicable Language regime	Information and contractual terms will be supplied in [specific language]. With your consent, we intend to communicate in [specific language/languages] during the duration of the credit agreement.
(c) concerning redress	
Existence of and access to out-of-court complaint and redress mechanism	[Whether or not there is an out-of-court complaint and redress mechanism for the consumer who is party to the distance contract and, if so, the methods of access to it]

(\*) This information is optional for the creditor.



## Annex VI – List of the most representative Services linked to a Payment Account

	<b>Term</b>	<b>Definition</b>
1	Maintaining the account	The Regulated Person operates the account for use by the Client.
2	Subscribing or renewing internet, mobile and telephone banking	The Regulated Person provides the Client with access for banking services using the internet, mobile or telephone.
3	Requesting statements	The Client requests bank statements, in paper or on other Durable Medium, over and above those which the Regulated Person is required to send by law.
4	Cash withdrawal or deposit	The Client requests to deposit or withdraw cash in or from an account.
5	Standing order	The Regulated Person makes regular transfers, on the instruction of the Client, of a fixed amount of money from the Client's account to another account.
6	Providing and renewing a debit card	The Regulated Person provides a payment card linked to the Client's account, enabling the latter to withdraw and pay, locally, abroad, and even online. The amount of each transaction made using the card is taken directly and in full from the Client's account.
7	Providing and renewing a credit card	The Regulated Person provides a payment card linked to the Client's payment account. The total amount of the transactions made using the card during an agreed period is taken either in full or in part from the Client's payment account on an agreed date. A Credit Agreement between the Regulated Person and the Client determines whether interest will be charged to the Client for the borrowing.
8	Making payments using an international debit or credit card	The Regulated Person enables the Client to make payments using an international debit or credit card.
9	Making payments using a local debit or credit card	The Regulated Person only enables the Client to make local payments using a local debit or credit card.



- |    |  |  |
|----|--|--|
| 10 | Replacing a card   | The Client requests a replacement of a card that was lost, stolen or damaged.  |
| 11 | Depositing and encashing a cheque  | The Client presents a cheque, whether local or international, for deposit or encashment.   |
| 12 | Stopping a cheque  | The Client asks the Regulated Person to stop the encashment of a cheque issued by that Client.   |
| 13 | Sending money in Euro to other accounts in the Single Euro Payments Area | The Regulated Person transfers money, in Euros, on the instruction of the Client, from the Client's account to another account in a SEPA country   |
| 14 | Sending money in other currencies to any other account                   | The Regulated Person transfers money, in non-euro currencies, on the instruction of the Client, from the Client's account to another account.  |
| 15 | Receiving money – Euro   | The Client receives money in Euros from Euro account   |
| 16 | Receiving money – other currencies                                       | The Client receives money in non-Euro currencies from non-Euro account   |
| 17 | Arranged overdraft   | The Regulated Person and the Client agree in advance that the Client may borrow money when there is no money left in the account. The agreement determines a maximum amount that can be borrowed, and whether fees and interest will be charged to the Client.                         |
| 18 | Direct Debit   | The Client permits someone else (recipient) to instruct the Regulated Person to transfer money from the Client's account to that recipient. The Regulated Person then transfers money to the recipient on a date or dates agreed by the Client and the recipient. The amount may vary. |

## Annex VII – Fee Information Document



### Fee Information Document



Name of the account provider:

Account name:

Date:

- This document informs you about the fees for using the main services linked to the payment account. It will help you to compare these fees with those of other accounts.
- Fees may also apply for using services linked to the account which are not listed here. Full information is available in [specify names of the relevant pre-contractual and contractual documents].
- A glossary of the terms used in this document is available free of charge.

Service	Fee
<b>General account services</b>	
[main service] [brand name]  Includes a <b>package of services</b> consisting of: Services beyond these quantities will be charged separately.	[•]
<b>Payments (excluding cards)</b>	
	[•]
<b>Cards and cash</b>	
	[•]
<b>Overdrafts and related services</b>	
	[•]
<b>Other services</b>	
	[•]



Package of services	Fee
[brand name]	[•] [•]
Services beyond these quantities will be charged separately.	

Information on additional services	
Information on fees for services exceeding the quantity of services covered by the package of services (excluding fees listed above)	
Service	Fee
[brand name]	[•]

Comprehensive cost indicator	[•]
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## Annex VIII – Statement of Fees

Statement of fees template



### Statement of Fees



[Name of the account provider]

[Contact details of the account provider]

[Client name]

[Contact details]

Account	
Account identification	
Period	From to
Date	

- This document provides you with an overview of all the fees for services linked to your payment account during the period shown above.
- It also informs you about any interest you may have paid or earned during this time.
- Information on individual transactions and account balance can be found on your account statements.

#### Summary of fees and interest

Total fees paid (total package of services fees and total fees paid)	[•]
Total interest paid	[•]
Total interest earned	[•]
Comprehensive cost indicator	[•]

Detailed statement of fees paid on the account

Service		Fee		
Service	Number of times the service was used	Unit fee	Number of times the fee was charged	Total
<b>General account services</b>				
[•]  Includes a <b>package of services</b> consisting of: Services beyond these quantities have been charged separately				[•]
<b>Payments (excluding cards)</b>				
				[•]
<b>Cards and cash</b>				
				[•]
<b>Overdrafts and related services</b>				
				[•]
<b>Other services</b>				
				[•]
<b>Total fees paid</b>				[•]

Detail of the fees included in the package of services

Package of services	Fee	Number of times the fee was charged
'Package service' [brand name, if applicable] Includes:	[•]	[•]
Services beyond these quantities have been charged separately.		

Detail of interest paid on the account

	Interest rate	Interest
		[•]
<b>Total interest paid</b>		[•]

Detail of interest earned on the account

	Interest rate	Interest
'Account name'		[•]
Total interest earned		[•]

Additional information [•]
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## Chapter 2 Marketing Rules

### Introduction

Advertisements or Marketing material relating to Retail Products which are unclear, misleading or otherwise unfair may result in the Client suffering a financial loss or other form of damage. This Chapter establishes adequate rules and guidance on what information should be included in Advertisements and Marketing material shared through different channels.

The applicable framework should give Clients the confidence that Regulated Persons will take the necessary measures to advertise and market their products in a fair, clear and transparent manner which excludes any aggressive or misleading behavior. This is the over-arching principle which is set out through the general requirements brought forward in the opening sections of this Chapter, with specific reference to Regulated Persons' duties in issuing and approving Advertisements.

The Chapter subsequently addresses key requirements for prescribed warning statements and other information that must be included in different types of Advertisements. These include the concepts of advertisements implying cost reduction and the necessary disclosures in instances where the Advertisement of a Retail Product is provided in conjunction with specific tax treatments.

A number of rules addressing the misconduct relating to unfair Advertising or Marketing practices aim to ensure that Regulated Persons avoid certain actions which would otherwise be considered to be detrimental to the Client, distinguishing between the concepts of misleading and aggressive Advertising or Marketing practices.

Purposely, this Chapter is then split into four mutually exclusive sections to address particular requirements revolving around Advertising and Marketing rules applicable for specific Credit Agreements and those applicable for Payment Accounts and Deposit Accounts. Such requirements arising from these respective sections are to be considered in addition to the other requirements falling under the section titled 'General Rules'.

Finally, the provisions of this Chapter are without prejudice to:

- Any rights which may be available to retail Clients under the [Consumer Affairs Act \(Cap. 378\)](#), including provisions emanating from the [Unfair Commercial Practices Directive \(Directive 2005/29/EC\)](#);
- Any responsibilities or obligations under other statutory or prudential requirements applicable in Malta and which apply to Regulated Persons; and

- The advertising standards as may be included in the Bye-Laws of the Malta Stock Exchange from time to time insofar as these apply to Regulated Persons listed on the Malta Stock Exchange.

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## Applicability

The following provisions are in accordance with the scope and applicability laid down in the [Consumer Credit Regulations](#) (S.L. 378.12).<sup>6</sup>

With respect to Rules and relevant Guidance in this Chapter which apply specifically to Consumer Credit Agreements, any such agreement qualifying as an Overdraft Facility where the credit has to be paid on demand or within three months, shall not be subject to the following rules and guidelines: R.2.2.41 and R.2.2.42.

With respect to Consumer Credit Agreements qualifying as:

- a. overrunning,
- b. open-ended Credit Agreements entered into before 1st October 2010, and
- c. Credit Agreements which provide for arrangements to be agreed by the Regulated Person and the Client in respect of deferred payments or repayment methods, where the Client is already in default on the initial Credit Agreement and where:
  - i. such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and
  - ii. the Client would not thereby be subject to terms less favourable than those laid down in the initial Credit Agreement,

the following rules and guidelines under this Chapter shall not apply: R.2.2.39 to R.2.2.42.

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<sup>6</sup> As stated in the Consultation Document, the MFSA supervision and powers will be expressly formalised through the issue (in due course) of relevant Maltese Subsidiary Legislation, as deemed necessary for the MFSA to assume the relevant supervisory remit. Therefore, for the purposes of Credit Institutions, this reference will (be substituted with a reference to Maltese subsidiary legislation to be issued under the Banking Act (Chapter 371 of the Laws of Malta).



## Section 1: General Rules

### 1.1 General Requirements

- R.2.1.1 Unless otherwise stated, the rules set out in this Chapter shall apply to:
- a. any Advertisement, Marketing material or information issued in or from Malta by the Regulated Person; and
  - b. any Advertisement, Marketing material or information which is circulated, published, broadcast or otherwise received in Malta.
- R.2.1.2 Advertisements shall be fair, clear and not misleading and shall be clearly identifiable as such.
- R.2.1.3 In issuing, approving or disseminating Advertisements, the Regulated Person shall ensure that:
- a. the design, presentation and content of an Advertisement is clear, fair, accurate and not misleading such that any Client can reasonably be expected to know immediately that it is an Advertisement;
  - b. the advertisement is designed in a manner which makes reference to the fact that terms and conditions may be applicable and relevant fees apply in the main body of the advertisement;
  - c. the Advertisement shall not seek to influence a Potential Client's attitude to the Advertised Retail Product or Service or the Regulated Person either by ambiguity, exaggeration or omission;
  - d. the nature and type of the advertised Retail 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 Client vulnerable.
- R.2.1.4 In deciding whether and how to issue an Advertisement to an Identified Target Market, a Regulated Person shall ensure that the medium selected for this purpose is commensurate with the nature of the Retail Product or Service, its likely Information requirements as well as the role and extent of the Information provided, the risks involved and the risk profile of the target audience in the sales process.
- G.2.1.1 The medium, content and format of the Advertisement should be such that it is easily understood that it is only intended for its Identified Target Market. The Advertisement itself should also be understood by such*

*Identified target market. Therefore, where possible, simple and accurate terms should be used as opposed to complicated and technical jargon.*

R.2.1.5 The Regulated Person shall ensure that an Advertisement or information which is being aimed at an Identified Target Market, shall also include a statement indicating such Identified Target Market.

*G.2.1.2 With respect to Advertisements and information disseminated via the Internet, Regulated Persons should also:*

- a. include a statement indicating the Identified Target Market which the website or email is intended for;*
- b. include appropriate statements that the Client is leaving the Regulated Person's website and accessing another in cases where the Regulated Person's website is hyperlinked to other sites.*

R.2.1.6 In addition to the rules relating to unfair advertising or marketing practices present in the [Consumer Affairs Act \(Cap. 378\)](#) and without prejudice to the generality of R.2.1.2 and R.2.1.3, a Regulated Person shall ensure that any Advertisement and information is not misleading in relation to:

- a. the nature of the advertised Retail Product or Service;
- b. the Regulated Person's independence or the independence of the information it provides;
- c. the Regulated Person's ability to provide the advertised Retail Product or Service and about the nature and type of such Retail Product or Service;
- d. the scale of the Regulated Person's activities;
- e. the extent of the resources of the Regulated Person;
- f. the nature of the Regulated Person's or any other person's involvement in the advertised Retail Product or Service;
- g. the scarcity of the advertised Retail Product or Service;
- h. any relevant risks and, in particular, shall not emphasise any potential benefits of a Retail Product or Service without also giving a fair and prominent indication of relevant risks.

*G.2.1.3 An Advertisement or other Information provided to Clients 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 Regulated Person that issues the Advertisement considers or intends it to be misleading.*

R.2.1.7 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 Regulated Person;
- b. a logo or other image associated with the Regulated Person;
- c. a contact point;
- d. a reference to the Services provided by the Regulated Person.

R.2.1.8 The Regulated Person 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 Regulated Person is registered.

R.2.1.9 An Advertisement or Marketing material must not include:

- a. The word 'Overdraft' or any similar expression describing any agreement, except where an agreement enables a Client to overdraw on a current account;
- b. The expression 'interest free' or any similar expression indicating that a Client is liable to pay no greater amount in respect of a transaction financed by credit than he would have otherwise paid had the transaction not be financed by credit, except where the total amount payable does not exceed the cash price;
- c. The expression 'gift', 'present' or any similar expression, except where there are no conditions which would require the Client to repay the credit or to return the item that is the subject of the claim.

## 1.2 Issuing and Approving Advertisements

R.2.1.10 No person, other than a Regulated Person, may issue or cause to be issued, Advertisements relating to Retail Products in or from Malta, unless its contents have been approved by a Regulated Person. Furthermore, the Regulated Person 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.2.1.11 When issuing or approving such Advertisements, Regulated Persons shall:

- a. appoint the Compliance Officer to:
  - i. approve Advertisements to be issued by the Regulated Person in its own name; and
  - ii. report to the MFSA any Advertisement issued or purporting to be issued by the Regulated Person without the approval referred to in (i) above;

- b. establish internal procedures relating to the approval of Advertisements to be issued by the Regulated Person itself, which need to include, as a minimum, the necessary arrangements to protect the legitimate interests of the Clients and to manage the risks to those who are or may be exposed to its Advertisements;
- c. keep records of all Advertisements issued and approved, for a period of not less than 5 years, including, as a minimum:
  - i. an approved certification in electronic format by the Compliance Officer that each Advertisement complies with the requirements of these Rules;
  - ii. the name of the individual who approved the Advertisements;
  - iii. the date of approval of the Advertisements;
  - iv. where applicable, the start and end date of the Advertisement in each medium used;
  - v. the Retail Product marketed and sufficient data to identify the media or channels used for the advertisement (target market to be reached) in accordance with R.2.1.4;
  - vi. the media or channels used and publications in which the Advertisement was included; and
  - vii. documentary evidence in support of any statement made in the Advertisement.

R.2.1.12 Any disclosure, warning or any other disclaimer which is required to be included in any Advertisement shall be shown prominently, clearly and intelligibly.

In the case of information provided orally, this must be clearly audible.

G.2.1.4 When issuing an Advertisement or communicating Information to a Client about a Retail Product or Service, a Regulated Person should consider whether omission of any relevant fact will result in the Advertisement or Information being insufficient, unclear, unfair or misleading.

- G.2.1.5 *Regulated Persons should:*
- a. *take account of the means of communication used to publish the Advertisement or communicate the Information to Clients and of the limitations and/ or disadvantages associated with a particular means of communication. To this effect G.2.1.15 should be noted for additional guidance with respect to publication of Information on different types of media;*
  - 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 only Information which is material to the Advertisement being published, is included. The Advertisement should indicate that further Information about the Retail Product or Service which is the subject of the Advertisement is available and from where.*

- R.2.1.13 Regulated Persons shall include a regulatory disclosure statement in all the Advertisements issued. This regulatory disclosure statement shall indicate that the Regulated Person is regulated by the MFSA or by a European regulatory authority, as applicable, as well as a reference to the legislation under which such regulation is afforded. The regulatory disclosure statement required by this paragraph should also be made by the Regulated Person when providing information to Clients.
- R.2.1.14 Regulated Persons shall ensure that Advertisements shall not use the name of the MFSA in such a way that would indicate or suggest endorsement or approval by the MFSA of the Retail Products of the Regulated Person.
- R.2.1.15 Regulated Persons shall ensure that any Advertisement they issue, which indicates the MFSA as the regulator of the Regulated Person issuing the Advertisement and which refer to matters not regulated by the MFSA, makes it clear that those matters are not regulated by the MFSA.
- R.2.1.16 Regulated Persons shall ensure that any Advertisement addressed to, or disseminated in such a way that it is likely to be received by Clients, shall include the name and address of the Regulated Person and identify in the same prominence both the Manufacturer of the Product and the Distributor which issued the Advertisement. It should also distinguish between which of the parties is the Manufacturer and which is the Distributor of the Retail Product.
- R.2.1.17 Regulated Persons shall ensure that an Advertisement which contains any initials or acronyms also states what the initials or acronyms stand for.
- R.2.1.18 Regulated Persons shall ensure that the Advertised Retail Product is described as free only where the Retail Product in its entirety is available free of charge to the Client.

- R.2.1.19 Regulated Persons shall not issue Advertisements or Marketing material to Clients stating or implying that credit is available regardless of the Client's financial circumstances or status.
- R.2.1.20 Regulated Persons shall ensure that any information contained in a Marketing communication is consistent with any information and documentation of the retail product or service which the Regulated Person provides to a Client in the course of carrying on its Services.
- R.2.1.21 The Advertisement promoting Retail Products or Services shall:
- a. refrain from using excessively technical wording;
  - b. provide an explanation of the terminology used;
  - c. be easy to read; and
  - d. where relevant, provide adequate explanation on the complexity of the Retail Product or Service and the risks arising from it to assist the Client's understanding of the characteristics of the promoted product or service.
- R.2.1.22 Whenever a Credit Intermediary issues Advertisements offering Retail Products, it shall indicate clearly the Regulated Person which manufactured the Retail Product advertised.
- R.2.1.23 Where an Advertisement compares two or more Retail Products, the Regulated Person issuing the Advertisement 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.
- G.2.1.6 An Advertisement does not need to specify a particular Retail Product or Service for there to be comparison. Nevertheless, there will be an implied comparison for the purposes of R.2.1.23 if it may reasonably be inferred that a comparison is being made.*

### 1.3 Warning Statements and other information that should be included in Advertisements

- R.2.1.24 Regulated Persons 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; and
- b. appear together with the benefits of the advertised Retail Product or Service.

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

- R.2.1.25 Regulated Persons issuing an Advertisement shall ensure that:
- a. the Information provided therein is not in conflict, in any way, with the relevant Retail Product documentation; and
  - b. the terminology used is adequate and appropriate for that particular Retail Product or Service.

- R.2.1.26 Regulated Persons shall ensure that where any Advertisement relates to a Product or Service that is denominated or priced in a foreign currency, or where the value of such Retail Product or Service may be directly affected by changes in foreign exchange rates, the relevant warning statements are disclosed.

- G.2.1.7 *Further to R.2.1.26, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

**Warning: This [Product/Service] may be affected by changes in currency exchange rates.**

- R.2.1.27 A Regulated Person shall ensure that for a Retail Product where the promised return of capital is only applicable on a specific date, an appropriate warning is given.

- G.2.1.8 *For the purposes of R.2.1.27, Regulated Persons should use the following warning or such other wording as appropriate in the particular circumstances:*

**Warning: If you cash in or redeem your Retail Product before [specify the particular date] you may lose some or all of the money you put into the Retail Product.**

- R.2.1.28 Regulated Persons shall ensure that a specific warning should be included in the case of Advertisements related to a Retail Product where there is no access to funds for the term of the Retail Product.



*G.2.1.9 For the purposes of R.2.1.28, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

**Warning: If you acquire this product, you will not have access to your money for *[insert time period during which funds cannot be accessed]*.**

R.2.1.29 A Regulated Person shall ensure that Advertisements that offer packaged Retail Products which are not manufactured by the Regulated Person issuing the Advertisements, indicate clearly that the Regulated Person is not the Manufacturer of the Retail Product advertised.

R.2.1.30 A Regulated Person must not issue Advertisements or Marketing material in relation to high-cost short-term Credit Agreements unless it clearly states that not meeting repayments might lead the Client to additional financial problems.

*G.2.1.10 For the purposes of R.2.1.30, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

**Warning: Late repayments can cause serious financial problems. Please ensure that you are familiar with all terms and conditions before committing to *[insert name (including branding name) of the Retail Product in question]*.**

R.2.1.31 Regulated Persons shall ensure that an Advertisement 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.2.1.32 Regulated Persons shall ensure that any assumptions on which a statement, promise or forecast contained in an Advertisement is based, are clearly stated, reasonable and up to date.

R.2.1.33 Regulated Persons shall ensure that an Advertisement that promotes more than one Retail Product or Service sets out clearly the key information relating to each Retail Product or Service in such a way that a Client can distinguish between the Retail Products and Services in question.

R.2.1.34 Where the information contained in an Advertisement is sourced from a third party, the Regulated Person 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 Regulated Person should also identify the source(s) of the information.

### 1.3.1 Advertisements implying cost reduction

R.2.1.35 This Rule applies in relation to an Advertisement that implies that a Regulated Person can reduce the applicable cost or fees relevant to the Client.

Such an Advertisement should:

- a. be consistent with the result expected to be achieved by Clients who respond to the Advertisement;
- b. state prominently the basis for any claimed benefits and any significant limitations; and
- c. comply with other relevant legislative requirements

### 1.3.2 Disclosures within Advertisements relating to Taxation

R.2.1.36 If any Advertisement or information refers to a particular tax treatment of a particular Retail Product or Service, Regulated Persons shall ensure that the Advertisement or information in question contains:

- a. details on the tax treatment of the Retail Product or Services, which is complete, fair, relevant, accurate and not misleading;
- b. an indication as to whether the Regulated Person 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.2.1.37 Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each Client and may be subject to change in the future.

## 1.4 Guidance on disclosures included within Advertisements broadcast on Television and Radio or through Telephone

- G.2.1.11 With respect to Advertisements broadcast on television and radio, in addition to the guidance provided in the above sections, Regulated Persons should:*
- a. state the regulatory disclosure statement as set out in R.2.1.13;*
  - b. have clear and legible risk warnings indicated on a caption at the very bottom of the visual which should take up not less than 20% of the whole screen;*
  - c. indicate the captions on a black background and using bold, white text which is non italicised. Captions at the bottom of the screen should not exceed 4 lines each and should only be updated at intervals of not less than 4 seconds each during broadcast of the visual;*
  - d. include a voice over of all the relevant risk warnings relative to the Retail Product.*
- G.2.1.12 When a Regulated Person makes a voice telephony communication to a Client as part of its Advertising or Marketing practice, it should make its identity and purpose of its call explicitly clear at the beginning of the conversation.*

## 1.5 Guidance on Advertisements issued on Social Media

- G.2.1.13 The rules under Chapter 1 on Disclosures of this Rulebook are media neutral; therefore they apply to social media as they would to any other medium.*
- G.2.1.14 Any form of communication through social media is capable of being an Advertisement, depending on whether it includes an invitation or inducement to engage in financial activity.*
- G.2.1.15 An Advertisement must be made within 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.*
- G.2.1.16 When deciding whether to promote or advertise through social media, Regulated Persons 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, Regulated Persons should take adequate measures to label and target their communications. The target*

*audience, the nature of the Retail Product and the likely information needs of the average recipient should be considered.*

- G.2.1.17 In order for Regulated Persons to adhere with the requirement to be “clear, fair and not misleading” as outlined in R.2.1.2, when promoting their Retail Products or Services through social media, such Regulated Persons should ensure that Clients have an appreciation of the relevant risks in addition to the potential benefits. Regulated Persons should ensure that relevant text is sufficiently prominent.*
- G.2.1.18 In view that Advertisements 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 Advertisement. 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.*
- G.2.1.19 Where a recipient shares or re-tweets a Regulated Person’s communication, responsibility lies with the communicator (i.e. the original 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 MFSA will take up the matter with the Regulated Person.*
- G.2.1.20 If a Regulated Person re-tweets a Client’s tweet, should the Client’s tweet endorse the benefits of a regulated financial Retail Product or Service, sharing of such comment by the Regulated Person will constitute a promotion. Re-tweeting by a Regulated Person of a Client’s tweet expressing satisfaction on good customer service is not considered to be a promotion.*
- G.2.1.21 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 Regulated Person, such as a senior person at the business, that individual and the Regulated Person should take necessary measures to clearly distinguish personal communications from those that are made in the course of that business.*
- G.2.1.22 When advertising Retail Products and Services through social media, Regulated Persons are required:*
- a. not to disguise the promotional nature of the communication;*
  - b. to ensure that information is presented in a way that is clear and not misleading;*

- c. to avoid exaggerating the benefits of Retail Products or Services; and*
- d. to ensure disclosure of a Retail Product's risks should have equal prominence as information on the Retail Product's benefits, in particular with regard to font size and colour.*

## Section 2: Advertising and Marketing rules applicable for specific Consumer Credit Agreements

### 2.1 Applicability

- R.2.2.38 In addition to the applicability of Section 1 of this Chapter, the Rules under this Section shall solely apply to Consumer Credit Agreements as set out in the Glossary of Definitions to this Rulebook. The term Credit Agreements within this Section shall therefore be construed as a reference to Consumer Credit Agreements.

### 2.2 General Requirements

- R.2.2.39 Without prejudice to the provisions relating to unfair Advertising or Marketing practices in this Rulebook, where an Advertisement relating to a Client Credit Agreement includes an interest rate or any figure relating to the cost of the credit to the Client, the Advertisement shall also include standard information by means of a representative example in accordance with R.2.2.40.
- R.2.2.40 The representative example referred to in R.2.2.39 shall specify and comprise in a clear, concise and prominent way, the following items of information:
- a. the borrowing rate, whether fixed, variable or both;
  - b. particulars of any charges included in the total cost of credit to the Client;
  - c. the total amount of credit;
  - d. the annual percentage rate of charge except in the case of overdraft facilities where credit has to be repaid on demand or within three months;
  - e. the duration of the agreement;

- f. in the case of credit in the form of a deferred payment for specific goods or services, the cash price and the amount of any advance payment;
- g. if applicable, the total amount payable by the Client; and
- h. if applicable, the amount of each repayment of credit.

R.2.2.41 An Advertisement relating to a Credit Agreement shall include a clear and concise statement in respect of any obligation to enter into a contract in respect of an ancillary service relating to the Credit Agreement, in particular an insurance service, where:

- a. the conclusion of that service is compulsory in order to obtain the credit or to obtain it on the terms and conditions Advertised; and
- b. the cost of that service cannot be determined in advance.

R.2.2.42 The obligation referred to in R.2.2.41 shall be advertised in a prominent way and accompanied by the APRC.

## Section 3: Advertising and Marketing rules applicable for Specific Credit Agreements relating to Residential Immovable Property

### 3.1 Applicability

- R.2.3.43 In addition to the applicability of Section 1 of this Chapter, the Rules and Guidance under this Section shall solely apply to Credit Agreements relating to Residential Immovable Property as set out in the Glossary of Definitions to this Rulebook. The term Credit Agreements within this Section shall therefore be construed as a reference to Credit Agreements relating to Residential Immovable Property.

### 3.2 General Requirements

- R.2.3.44 Regulated Persons, including Credit Intermediaries, shall always act in the best interest of Clients when disclosing information of any nature.
- R.2.3.45 Regulated Persons, including Credit Intermediaries, shall take all necessary steps to ensure full compliance with these regulations.
- R.2.3.46 Without prejudice to other Rules related to unfair Advertising or Marketing practices, in particular to the [Unfair Commercial Practices Directive \(Directive 2005/29/EC\)](#), Regulated Persons shall ensure that any Advertising and Marketing communications concerning Credit Agreements are fair, clear and not misleading. In particular, wording that may create false expectations for a Client regarding the availability or the cost of a Credit Agreement shall be prohibited.
- R.2.3.47 Without prejudice to other Rules related to unfair Advertising or Marketing practices, in particular to the [Unfair Commercial Practices Directive \(Directive 2005/29/EC\)](#), any Advertising concerning Credit Agreements which indicates an interest rate or any figures relating to the cost of the credit to the Client, shall include the standard information in accordance with these Rules.



- R.2.3.48 The standard information referred to in R.2.3.47 shall specify in a clear, concise and prominent way:
- a. the identity of the Regulated Person or, where applicable, the Credit Intermediary;
  - b. that the product advertised is a Credit Agreement and, where applicable, that the Credit Agreement will be secured by a hypothec or privilege on residential immovable property, by a right related to residential immovable property;
  - c. the borrowing rate, indicating whether this is fixed or variable or a combination of both;
  - d. particulars of any charges included in the total cost of credit to the Client;
  - e. the total amount of credit;
  - f. the APRC which shall be included in the 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 Client;
  - i. where applicable, the amount of the instalments and the amount of each repayment of credit;
  - j. where applicable, a warning regarding the fact that possible fluctuations of the exchange rate could affect the amount payable by the Client; and
  - k. where applicable, a warning concerning the risk of losing the immovable property in the event of non-observance of the commitments linked to the Credit Agreement.
- R.2.3.49 The information listed in R.2.3.48, other than that listed in paragraphs (a), (b) or (j) thereof, shall be specified by means of a representative example and shall adhere to that representative example throughout.
- R.2.3.50 Any Advertising concerning Credit Agreements which include an interest rate or any figures relating to the cost of the credit to the Client, shall include a clear and concise statement in respect of any obligation to enter into a contract in respect of an ancillary service relating to the Credit Agreement, in particular an insurance service, where:
- a. the conclusion of that service is compulsory in order to obtain the credit or to obtain it on the terms and conditions advertised; and
  - b. the cost of that service cannot be determined in advance.
- R.2.3.51 The obligation referred to in R.2.3.50 shall be Advertised in a prominent way together with the APRC.

R.2.3.52 The information referred to in Rules R.2.3.48, R.2.3.50 and R.2.3.51 shall be easily legible or clearly audible as appropriate, depending on the medium used for Advertising and Marketing.

R.2.3.53 Where Advertising or Marketing material concerns a Credit Agreement for which security is or may be required, the Advertising or Marketing material must:

- a. state that security is or may be required; and
- b. specify the nature of the security.

R.2.3.54 With reference to Advertising or Marketing material as referred to in R.2.3.53, where the security comprises or may comprise a mortgage or charge on a property used by the Client as a dwelling, whether or not it is the Client's primary residence:

- a. the Advertising or Marketing material must contain a warning that the immovable property might be repossessed if repayments or any similar debt secured on it are not met in a timely manner;
- b. where the Advertising or Marketing material indicates that credit is available for the payment of debts due to other lenders, there must be an additional warning preceding the one in (a) above to state that Clients must consider carefully before securing other debts against their residential immovable property.

G.2.3.23 *For the purposes of R.2.3.54(a), Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

**Warning: Your residential immovable property may be repossessed if you do not keep up with repayments on a mortgage or any other debt secured on it.**

G.2.3.24 *For the purposes of R.2.3.54(b), Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

**Warning: Think carefully before securing other debts against your residential immovable property.**

## Section 4: Advertising and Marketing rules applicable for Payment Accounts pursuant to the Payment Accounts Regulations

### 4.1 Applicability

- R.2.4.55 In addition to the applicability of Section 1 of this Chapter, the Rules under this section shall only apply to Payment Accounts through which Clients are able at least to:
- place funds in a Payment Account;
  - withdraw cash from a Payment Account; and
  - execute and receive payment transactions, including credit transfers, to and from a third party.

### 4.2 General Requirements

- R.2.4.56 Where applicable, a Regulated Person shall use the standardised terminology set out in the list of the most representative services linked to a payment account in its contractual, commercial and marketing information.

The list of the most representative services linked to a Payment Account is issued and periodically updated by the MFSA and can be referred to in Annex VI to Chapter 1.

- R.2.4.57 A Regulated Person may use brand names to designate its services in its contractual, commercial and marketing information to Clients, provided that it clearly identifies, where applicable, the corresponding standardised terms set out in the list of the most representative services linked to a payment account referred to in R.2.4.56 and as may be amended from time to time.

## Section 5: Advertising and Marketing rules applicable for Deposit Accounts

## 5.1 Applicability

R.2.5.58 The Rules under this Section shall only apply to accounts in so far as they cannot be considered as Payment Accounts capable of undertaking day-to-day payment transactions. To this end, the term 'Deposit Accounts' shall include 'fixed term savings/deposit accounts' and other 'savings accounts' which cannot undertake day-to-day payment transactions.

Specific rules covering Payment Accounts are considered under Section 4 of this Chapter.

## 5.2 General Requirements

R.2.5.59 For the purposes of this Section, the term 'Advertising Media' should be understood as referencing:

- a. print (e.g. newspapers or brochures/leaflets/direct mailshots available to the public);
- b. visual means (e.g. television);
- c. sound (e.g. radio); and
- d. electronic (e.g. Internet).

R.2.5.60 Regulated Persons should ensure that the aims of advertising for Deposits should not only be to announce a service or product, but also to provide all the necessary information for Clients to form an opinion on the Deposit being advertised and on the implications of entering into a business relationship with a Regulated Person during which both parties have to adhere to the highest ethical standards.

R.2.5.61 Regulated Persons advertising for Deposits shall be bound to ensure that advertisements contain the necessary requisites that enable judicious analysis by the Client aided by all the necessary background information.

R.2.5.62 Any Advertising Media related to Deposits which is issued by Regulated Persons shall therefore ensure that:

- a. the Client is made fully aware of all the financial implications and legal aspects related to the Deposits;
- b. the returns promised to the Client are realisable;
- c. the quality of Deposit is guaranteed;
- d. the legal responsibilities of the providers of the Deposit and their liability are clearly spelled out;

- e. the Deposit will encourage a healthy relationship between the Client and the Regulated Person that provides it; and
- f. the Deposit is compliant with the provisions of the [Banking Act \(Chapter 371\)](#), related Rules and any other laws of Malta.

R.2.5.63 In Advertising for Deposits, Regulated Persons are to maintain a sense of responsibility to their Clients and to the financial system as a whole.

R.2.5.64 Advertising by Regulated Persons should therefore respect the principles of fair competition as established by the laws of Malta and should not bring the financial sector into disrepute.

R.2.5.65 When Advertising for Deposits, Regulated Persons are expected to be aware that misleading Advertising leads to the distortion of competition within the market and jeopardises the economic welfare of actual and/or potential Clients. Misleading Advertising may also lead Clients into taking decisions that could be prejudicial to their financial well-being.

R.2.5.66 Advertising can be misleading when:

- a. the characteristics of a Deposit as advertised do not reflect the financial benefits that the Client expects to derive;
- b. any charges related to the Deposit are hidden in such a way that the Client fails to assess their final impact on the ultimate financial benefits expected;
- c. the repute of the advertising Regulated Person is mis-represented to the extent that the Client is deceived.

Regulated Persons must therefore ensure that no Advertisement is capable of misleading Clients through inaccuracy, ambiguity, exaggeration, omission, high flowing language or the creation of false expectations.

R.2.5.67 The primary responsibility of observing all legal and regulatory provisions related to Advertising for Deposits falls on the advertising Regulated Person and others involved in preparing and publishing the Advertisements such as integrated marketing communications agencies, publishers and related service suppliers.

Regulated Persons therefore need to ensure that there are officials of high rank who can be held accountable and responsible for the whole Advertising process. Any persons having this capability would be expected to be able to handle any enquiry, Client complaints and

regulatory matters that may arise in connection with Advertising for Deposits and for other monies repayable to the public.

- R.2.5.68 All Advertisements for Deposits should carry a statement to the effect that the advertising Regulated Person is licensed to undertake the business of banking in terms of the [Banking Act \(Chapter 371\)](#).
- R.2.5.69 Regulated Persons should ensure that, as a minimum, every Advertisement should state:
- a. the full name of the Regulated Person accompanied by its official signage;
  - b. the term, if any, of the Deposit;
  - c. applicable interest rates;
  - d. the frequency of payment if interest exists;
  - e. whether interest is compounded; and
  - f. that full terms and conditions are available on request.
- R.2.5.70 The format, including the language, to be used in the Advertisement, should be such that it enables actual and prospective Clients to be fully aware of and conversant with the nature of the commitment which they would enter into once they respond to the Advertisement itself.
- R.2.5.71 The Advertisement must clearly state the full postal address and/or other contact details through which the Advertising Regulated Person can be contacted during normal hours and any alternative arrangements as applicable.
- R.2.5.72 Regulated Persons shall ensure that rates of interest are described appropriately in any Advertisement, also taking into consideration the option for the application of withholding tax at source. The following terms should preferably be used, namely:
- a. % gross;
  - b. % net (of withholding tax);
  - c. % tax free (if applicable); and
  - d. % compounded annual rate.
- R.2.5.73 In addition to R.2.5.72, Regulated Persons must also ensure that:
- a. No rate shall be given greater prominence in size of type or otherwise than the contractual rate, provided interest is due at least annually;
  - b. Where rates are quoted on the basis of other than a twelve-month period, this must be clearly stated and such rates shall be given no greater prominence than the 'compound annual rate';
  - c. Once a rate of interest is quoted, the Advertisement must contain a specific statement indicating whether the rates quoted are fixed for

any term specified and whether the interest rates are subject to variations (e.g. floating rate). If so, the relative variations should be defined in so far as is possible;

- d. Advertisements quoting a rate of interest or yield that are intended for printed media or direct mail must contain a suitable qualification such as '*rates correct at the time of going to press*' and must state the period for which the conditions as published in the advert would apply; and
- e. Where interest is forfeited on any withdrawal without notice, words such as '*instant access*' or '*immediate withdrawals*' must not be displayed together with the rate of interest without qualification.

R.2.5.74 Regulated Persons shall also ensure that:

- a. Advertisements must contain a clear statement of the conditions of withdrawal;
- b. With respect to deposits that do not allow for withdrawals even after a period of notice without forfeiting interest, the text of the Advertisement must include a statement indicating that, if a withdrawal is made, the stated interest rate will not be achieved;
- c. The minimum and maximum deposit amount, if any, that would be accepted is clearly indicated;
- d. Advertisements that invite Deposits by immediate coupon response should include a statement in the sense that the terms and conditions of the Deposits would be available on request prior to completing the coupon; and
- e. Every Advertisement shall state the currency in which Deposits can be made.

R.2.5.75 In the case of Advertising through television and other visual media or by way of sound broadcasting, the requirements listed in Rules R.2.5.72 to R.2.5.74 should be shown clearly and legibly and spoken in a clear manner as appropriate and applicable.

## Chapter 3 Product Oversight Requirements

### Introduction

This Chapter sets out Rules which address the importance that Regulated Persons must ensure that risks of Client detriment associated with Retail Products are addressed through their appropriate product oversight and governance arrangements. It is therefore crucial that one of the main objectives of such product oversight and governance arrangements is to require Manufacturers to give due consideration to the



interests, objectives and characteristics of Clients when designing Retail Products and within their product approval process. Similarly, this Chapter covers a number of obligations pertaining to Regulated Persons acting as Distributors of the Retail Product in order to ensure alignment with the Manufacturer's initial intents and purposes for the said Retail Product.

This chapter sets out a number of rules and guidelines applicable to Regulated Persons which manufacture and/or distribute Retail Products with the aim of addressing risks of Client detriment. It primarily deals with the establishment of a Manufacturer's product oversight and governance arrangements and their respective objectives. Amongst others, the requirements relate to product design, testing and monitoring, as well as the procedures for implementing remedial actions where a fault is identified. Equally important are the rules and guidelines related to the identification of the relevant Target Market, with Manufacturers obliged to identify the category of Clients for whose needs, characteristics, nature and objectives each specific Retail Product is compatible. This would not take away from Clients the ability to choose products that they wish to purchase but is merely intended to avoid consumer detriment by ensuring that Clients are not able to acquire products which are not intended for their circumstances.

For such purposes, a distinction is drawn between Manufacturers and Distributors. Regulated Persons will very often act as both Manufacturers and Distributors when it comes to the provision and distribution of Retail Products to Target Markets. Notwithstanding, Distributors that are involved in the design and manufacture of a Retail Product should be considered as Manufacturers for the purpose of setting up product oversight and governance arrangements and should therefore also comply with the rules and guidelines earmarked for Manufacturers, in addition to those applicable for Distributors.

## Section 1: General Rules

- R.3.1.1 The Rules and Guidance set out in this Chapter, unless stated otherwise, shall apply to all Regulated Persons providing Retail Products as defined for the purpose of this Rulebook.
- R.3.1.2 Whenever a Regulated Person which qualifies as a Manufacturer is also acting as a Distributor, it shall ensure effective compliance with the requirements of this Chapter pertaining to both Manufacturers and Distributors.
- R.3.1.3 The Rules and Guidance set out under this section entitled General Rules shall apply to all Regulated Persons when acting as Manufacturers and/or Distributors, unless otherwise indicated. These shall apply both for the manufacturing and distribution of new Retail Products, as well as for the manufacturing and distribution of existing Retail Products that have been subject to significant adaptations.
- R.3.1.4 As a general principle, Manufacturers shall ensure that:
- a. Retail Products are designed to meet the needs of an identified Target Market of end Clients; and that
  - b. Retail Products are distributed in a manner which is compatible with the identified Target Market.
- R.3.1.5 Manufacturers and Distributors shall ensure that they always act honestly, fairly and professionally in accordance with the best interests of Clients when designing, valuing, pricing and offering a Retail Product.
- G.3.1.1 Pursuant to R.3.1.5, a number of good practice examples for both Manufacturers and/or Distributors are put forward in Annex I to this Chapter.*
- R.3.1.6 Manufacturers shall establish and implement product governance and oversight arrangements that set out appropriate measures and procedures aimed at designing, monitoring, reviewing and distributing Retail Products for Clients, which take into account the interests, objectives and characteristics of Clients, whilst minimising conflicts of interests, as well as taking action in respect of Retail Products that may lead to detriment to Clients.
- R.3.1.7 Distributors shall also establish, implement and review product oversight and governance arrangements which are specific and

proportionate to their size and the role they carry out in bringing the Retail Products to the Market.

R.3.1.8 A Manufacturer shall ensure that its compliance function continuously monitors the development and periodic review of its product governance and oversight arrangements in order to detect any risk of failure by the Manufacturer to comply with the obligations set out in this Chapter.

*G.3.1.2 Proper implementation of product governance and oversight arrangements ensures that all relevant staff members have knowledge of and observe these arrangements for their respective area of activities. It also ensures that any changes to the arrangements are promptly communicated to them.*

R.3.1.9 A Manufacturer shall retain full responsibility for compliance with its product governance and oversight arrangements as described in these Rules when it designates a third party to design Retail Products on its behalf.

R.3.1.10 A Manufacturer shall understand and regularly review the Retail Products it offers or markets, taking into account any event that could materially affect the identified Target Market. It shall be required to assess whether the Retail Product remains consistent with the needs of the Target Market and whether the intended distribution strategy remains appropriate, or whether the Retail Product is reaching Clients for whose needs, characteristics and objectives it is not compatible.

R.3.1.11 Distributors shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interests from adversely affecting the interests of its Clients. These arrangements must be proportionate to the activities performed and the Retail Product sold.

*G.3.1.3 Manufacturers and Distributors shall ensure that Product Governance and Oversight Arrangements do not rely excessively on the judgement and discretion of a limited number of persons but incorporates the effective input of all relevant staff and senior management.*

R.3.1.12 Distributors shall themselves have in place adequate product governance arrangements to ensure that Retail Products and Services they intend to offer or recommend are consistent from the outset, compatible with the needs, characteristics, and objectives of an

identified Target Market and that the intended distribution strategy is being observed with respect to such Target Market.

- R.3.1.13 Distributors shall always be required to identify and assess the circumstances and needs of the Client to who they are effectively going to offer or recommend a Retail Product, so as to ensure the compatibility between that Retail Product and the respective Clients. This requirement shall apply in a proportionate manner depending on the nature of the Retail Product.
- R.3.1.14 Regulated Persons acting as Manufacturers shall appropriately identify and assess the circumstances and needs of the Clients they intend to focus on, so as to ensure that Clients' interests are not compromised as a result of commercial or funding pressures. As part of this process, Manufacturers shall identify any groups of Clients for whose needs, characteristics and objectives the Retail Product is not compatible.
- R.3.1.15 In the event that the activity of the Regulated Person acting as either Manufacturer, Distributor or both, is in whole or in part outsourced to third parties, or carried out by another entity in other ways, Regulated Persons shall ensure that, in doing so, they comply with the requirements established in the [BR/14 on Outsourcing by Credit Institutions Authorised under the Banking Act](#) and the [EBA Guidelines on Outsourcing Arrangements \(EBA/GL/2019/02\)](#).

This includes, in particular, the principle, which provides that *'the ultimate responsibility for the proper management of the risks associated with outsourcing or the outsourced activities lies with an outsourcing institution's senior management'*.

This signifies that each Regulated Person shall remain responsible for all its obligations emanating from this Rulebook, even in cases where functions have been outsourced to third parties. The Management Body shall therefore ensure that sufficient resources are available to appropriately support and ensure the performance of those responsibilities, including overseeing all risks and managing the outsourcing arrangements.

## Section 2: Manufacturer's Product Governance and Oversight Policy

- R.3.2.16 The Manufacturer shall establish, implement and review effective product oversight and governance arrangements. The arrangements shall aim, when products are being designed and brought to the market:
- a. to ensure that the interests, objectives and characteristics of Clients are taken into account;
  - b. to avoid potential Client detriment; and
  - c. to minimise conflicts of interest.
- R.3.2.17 A Manufacturer shall set out its product governance and oversight arrangements in a written document, termed the Product Governance and Oversight Policy (PGOP), and make it available to its relevant staff.
- R.3.2.18 Manufacturers shall, amongst others, ensure that their PGOP addresses the:
- a. development, provision and launch of new Retail Products and Services (including product pricing considerations, product testing procedures and the overall product approval process);
  - b. procedures aimed at monitoring and reviewing Retail Products available on the market;
  - c. remedial action to be applied when instances of Client detriment are observed during the lifetime of a Retail Product;
  - d. responsibilities and methodology applicable in identifying Target Markets, as well as developing new Target Markets and assessing significant changes to existing ones;
  - e. identification of responsibilities allocated to different roles and business units within the Manufacturer, including Senior Management and the Management Body;
  - f. appropriate procedures relating to distribution arrangements, sharing of information with Distributors and distribution channel identification;
  - g. procedures governing outsourcing arrangements; and
  - h. overall retail strategy adopted by the Manufacturer.
- G.3.2.4 The PGOP should also include definitions to key terminology such as 'new product/market/business' and 'material changes' which are ordinarily used in the organisation and the internal functions involved in the decision-making process.*
- R.3.2.19 Product oversight and governance arrangements housed in the PGOP shall be proportionate to the nature, scale and complexity of the relevant business of the Manufacturer. The implementation/application of the arrangements shall have regard to the level of potential risk of the Client and complexity of the product.

- R.3.2.20 The Manufacturer's PGOP shall at all times support the proper management of conflicts of interest in conjunction with other relevant policies it may have in place.

## Section 3: Review of Product Governance and Oversight Policy

- R.3.3.21 The product oversight and governance arrangements (housed within the PGOP) shall be reviewed and updated by the Manufacturer on a regular basis.

*G.3.3.5 A minimum frequency for regular review and updates is to be established. In addition, relevant factors are to be identified which, once they occur, could trigger an ad hoc review of the PGOP. Such factors could be, for example, significant changes in the retail strategy, changes in the complexity of the Retail Product lines, changes in the distribution channels, and any material change effecting the Target Market.*

*G.3.3.6 Any review of the PGOP has to be appropriately documented. The documentation needs to record who conducted the review and to include any suggested recommendations and the decisions subsequently taken by the Manufacturer's Management Body in respect of those recommendations as well as the reasons for them.*

- R.3.3.22 Whilst the PGOP is to be maintained and reviewed by the Manufacturer, the relevant Distributors shall also conduct their own independent periodic review of the arrangements set out by the Manufacturer in the PGOP in order to detect any risk of failure to comply with its obligations.

- R.3.3.23 In order to support its PGOP reviews, a Manufacturer shall obtain from its Distributors information on sales and, where appropriate, information on independent reviews carried out as per R.3.3.22.

- R.3.3.24 For the purposes of assessing whether its PGOP and all arrangements therein operate as intended, the Manufacturer's compliance function shall ensure that, in so far as compliance reporting to its Management

Body is concerned, the section of compliance reports dealing with product governance arrangements shall address, at least, the following:

- a. the compliance function's role in the monitoring and review of the Manufacturer's PGOP;
- b. the compliance function's monitoring and assessment, on a regular basis, of the adequacy, implementation and effectiveness of the Manufacturer's PGOP and the actions taken or to be taken to address any breaches and/or deficiencies it identifies;
- c. information about the Retail Products manufactured by the Manufacturer, including information on their distribution strategy, which shall include, as a minimum:
  - i. the number and nature of the Retail Products manufactured and distributed, as applicable, including their respective target markets and other information from the respective product approval process necessary to assess the product's compliance risk, notably with the Manufacturer's PGOP (for instance, complexity of the product and product related conflicts of interests) with a specific focus on new types of Retail Products manufactured and distributed during the reporting period, as well as the Retail Products whose features have been significantly amended during such period;
  - ii. in addition to the information referred to in indent (a), the compliance report shall also include information relating to each respective Distributor, with a specific focus on new Distributors, as part of the information on the overarching distribution strategy;
  - iii. whether the Retail Products are distributed outside their Target Market, and if so to which extent.

- G.3.3.7 When reporting information on product governance arrangements as specified in R.3.3.24, the Manufacturer's compliance function may:*
- a. take a critical look at any work, reports or methods from the Regulated Person's relevant function or employees;*
  - b. in accordance with the proportionality principle, provide less in-depth information with respect to simpler, more common Retail Products and provide more detailed information on Retail Products characterised by complexity, risk features or other relevant features.*

## Section 4: Documentation of Product Governance and Oversight Policy



R.3.4.25 All actions taken by the Manufacturer in relation to the PGOP shall be duly documented, kept for audit purposes and made available to the MFSA upon request.

*G.3.4.8 Without prejudice to local legislation, it is recommended that the records of the relevant documentation are kept in a Durable Medium for a minimum period of five years. The period starts when the relevant action is taken, however there might be situations where it is appropriate to keep the documentation for a longer period of time, e.g. due to the lifetime of a Retail Product.*

## Section 5: Product Testing

R.3.5.26 The Manufacturer shall ensure that the relevant product oversight and governance arrangements related to the launch of a new Retail Product are considered in a dedicated section of the PGOP and are in line with Section 22 of [Banking Rule 24](#) which implements Guideline 18 of the EBA's Guidelines on Internal Governance ([EBA/GL/2021/05](#)) in cases where such Guideline applies<sup>7</sup>.

R.3.5.27 In implementing R.3.5.26, and:

- a. before a product is brought to the market;
- b. an existing product is sold to a new target market; or
- c. significant change is made to an existing product,

the Manufacturer shall conduct product testing, in order to be able to assess how the Retail Product would affect its Clients under a wide range of scenarios, including stressed scenarios. Manufacturers shall make appropriate product changes where the scenario analysis gives rise to poor results for the Target Market.

*G.3.5.9 In determining whether significant adaptations have occurred with respect to an existing Retail Product, Manufacturers should consider the following set of criteria:*

- a. significant changes in the processing of the Retail Product including an extension of the product distribution, the introduction of new, or the withdrawal of existing, product or service features;*

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<sup>7</sup> References to NPAP in EBA/GL/2021/05 should be considered as referring to the PGOP as defined in this Rulebook.

- b. a change in the Target Market and the introduction of a new Client market segment (including geographically) as a Target Market;*
- c. changes that affect the use of the Retail Product by the Client on a day-to-day basis;*
- d. changes for which the Client would reasonably perceive there to be a change in the level of service compared with what is currently being provided;*
- e. changes in one or more material features that alter the risk profile or the complexity of the Retail Product from a Client perspective. Those changes should include changes that affect the use of the Retail Product by the Client on a day-to-day basis, changes for which the Client would reasonably perceive there to have been a change in the level of service compared with what is currently being provided;*
- f. a change in the sale conditions, a new distribution channel or the introduction of an alternative channel of selling, including the use of third parties for the sale of the Retail Product;*
- g. significant modifications to the Retail Product pursuant to new legal or regulatory rules and standards;*
- h. material changes to related processes (e.g. new outsourcing arrangements) and systems (e.g. IT change processes), which have an impact on Clients; and*
- i. changes in terms and conditions related to interest rates, costs and charges.*

- R.3.5.28 The Manufacturer's product testing process shall also identify a Target Market for each Retail Product and shall ensure that all relevant risks to such Target Market are assessed and that the intended distribution strategy is consistent with the Target Market itself. Reasonable steps shall be taken to ensure that the Retail Product is in fact distributed to the identified Target Market.
- R.3.5.29 Where multiple Manufacturers collaborate to manufacture a Retail Product, only one common Target Market shall be identified.
- R.3.5.30 A Manufacturer shall ensure that staff involved in designing and manufacturing Retail Products have the necessary skills, knowledge and expertise to properly understand the Retail Products sold and the interests, objectives and characteristics of the Clients belonging to the Target Market.
- R.3.5.31 The Manufacturer's product testing shall assess if the Retail Product meets the identified needs, objectives and characteristics of the Target Market over the course of its lifetime.

- G.3.5.10 The Product lifetime is understood as capturing the entire life cycle of a Retail Product which begins at the moment when the Retail Product is being designed and only finishes once the Retail Product is no longer available in the market. It therefore also covers situations when the Retail Product is no longer being sold but there are still Clients who own the Retail Product. The end of the life cycle of the Retail Product is reached only when the last Retail Product has been withdrawn from the market.*
- R.3.5.32 A Manufacturer shall not bring a Retail Product to the market if the results of the product testing show that the Retail Product is not aligned with the identified needs, objectives and characteristics of the Target Market.
- R.3.5.33 A Manufacturer shall carry out Retail Product testing in a qualitative and, where appropriate, in a quantifiable manner depending on the type and nature of the Retail Product and the related risk of detriment to Clients.
- R.3.5.34 Manufacturers shall establish, implement and maintain procedures and measures to ensure that the manufacturing of Retail Products complies with the requirements on proper management of conflicts of interest, including matters relating to remuneration.
- R.3.5.35 A Manufacturer shall ensure that its compliance and risk functions are involved in the Retail Product design process and are entitled to intervene and make appropriate changes at every stage.
- R.3.5.36 Additionally, both the risk management function and the compliance function of the Manufacturer shall be involved in approving new Retail Products or significant changes to the existing Retail Products. Their input shall include a full and objective assessment of risks arising from new activities under a variety of scenarios; of any potential shortcomings in the Manufacturer's risk management and internal control frameworks; and of the Manufacturer's ability to manage any new risks effectively.
- G.3.5.11 Whilst Manufacturers are encouraged to have defined structures and clear escalation lines which involve their risk and compliance functions in the product approval process, the process itself should not be owned by either function as this could lead to the loss of the required independence.*
- G.3.5.12 When testing a Retail Product, Manufacturers need to consider all significant risks to which Clients subscribing to that Retail Product*

*would be exposed to in order to align the Retail Product with the interest of the Target Market.*

*G.3.5.13 For instance, Manufacturers need to make appropriate changes before the launch of a Retail Product, where the Product testing and/or scenario analysis gives rise to poor results for the Target Market.*

*G.3.5.14 The range of scenario analysis needs to be proportionate to the complexity of the Retail Product, its risks and the relevance of external factors with respect to the Retail Product's performance.*

R.3.5.37 A Manufacturer's PGOP shall also cover every consideration to be taken into account before determining whether to introduce new Retail Products or make significant changes to existing Retail Products or Services. In doing so, the PGOP shall set out the main issues to be addressed before such a decision is made. These shall include:

- a. regulatory compliance;
- b. accounting;
- c. pricing models;
- d. the impact on risk profile, capital adequacy and profitability;
- e. the availability of adequate front, back and middle office resources; and
- f. the availability of adequate internal tools and expertise to understand and monitor the associated risks.

Furthermore, Manufacturers shall identify and assess the ML/TF risk associated with the new Retail Product or business practice and set out the measures to take to mitigate those risks. The decision to launch a new activity shall clearly state the business unit and individuals responsible for it. A new activity shall not be undertaken until adequate resources to understand and manage the associated risks are available.

R.3.5.38 For every Retail Product or Service, the Manufacturer shall also carry out an impact assessment on:

- a. the impact of fees and charges of the said Retail Product or Service; and
- b. any good outcomes envisaged from the sale of that Retail Product or Service,

with respect to the interests, objectives and characteristics of Clients belonging to the identified Target Market during the lifecycle of the said Retail Product or Service.

Provided that, the term '*fees and charges*', does not include any rate of interest or any fee, charge, cost or expense in connection with the Retail Product or Service which is levied by a party other than the Regulated

Person to the Regulated Person or the Client and which is to be discharged by the Client,

- R.3.5.39 The impact assessment referred to in R.3.5.38 shall, as a minimum:
- (a) include an assessment of both the number of Clients impacted and the typology of such Clients;
  - (b) demonstrate, amongst other matters, the fairness of such fees and charges and of other relevant key terms and conditions.
- R.3.5.40 The Manufacturer shall be required to carry out the impact assessment referred to in R.3.5.38 both when a Retail Product or Service is being designed to be brought into the market and when significant changes are made to an existing Retail Product or Service.
- R.3.5.41 The Regulated Person shall notify the MFSA, in writing, at least three (3) months prior to the intended launch and commencement of the application of the fees and charges for which the impact assessment referred to in R.3.5.38 is carried out.
- Provided that, every notification to the MFSA shall be submitted together with:
- (a) a copy of the impact assessment referred to in R.3.5.38 signed by the Compliance Officer;
  - (b) a statement of justification of the fees and charges; and
  - (c) a statement as to the additional income likely to accrue from the fees and charges.

## Section 6: Product Monitoring

- R.3.6.42 Once the Retail Product is brought to market, the Manufacturer is ultimately responsible for product monitoring and shall monitor the product on an ongoing basis to ensure that the interests, objectives and characteristics of Clients continue to be appropriately taken into account.
- R.3.6.43 The Manufacturer shall assess whether the Retail Products remain consistent with the needs, characteristics and objectives of the identified Target Market and whether those Retail Products are being distributed to the Target Market or are reaching Clients outside the Target Market.

- R.3.6.44 A Manufacturer shall periodically gather appropriate information, including from any relevant Distributors forming part of the distribution strategy, as to the performance of a Retail Product in order to improve the design and manufacture of other products in development.
- R.3.6.45 In order to assist the Manufacturers in their obligation of product monitoring, the Distributor shall collect information to permit the Manufacturer to decide whether the Retail Product the Distributor brings to the market meets the interests, objectives and characteristics of the Target Market on an ongoing basis.
- R.3.6.46 If the Distributor identifies any problems regarding product features, product information or the Target Market when offering and selling Retail Products, the Distributor shall promptly inform the Manufacturer of the issue.
- R.3.6.47 A Manufacturer that identifies during the lifetime of a Retail Product any circumstances related to the Retail Product that may adversely affect the Client of that Retail Product, the Manufacturer shall take appropriate action to mitigate the situation and prevent further occurrences of the detrimental event. The Manufacturer shall promptly inform concerned Distributors and Clients about the remedial action taken.
- G.3.6.15 In accordance with the proportionality principle, the frequency and intensity of the monitoring may vary depending on the type and characteristics of specific Retail Products, namely the riskiness to Clients and the complexity or the specific features of the Retail Product itself.*
- G.3.6.16 In order to assess whether a Retail Product still meets the interests, objectives and characteristics of the Target Market, the Manufacturer may conduct Client interviews and satisfaction surveys before development of the product and after the product launch. The assessment could cover issues such as product pricing, product process/documentation and the overall relationship with the Manufacturer.*

## Section 7: Remedial Action

- R.3.7.48 If the Manufacturer identifies a problem related to a Retail Product in the market, or when monitoring the performance of the product, the

Manufacturer should take the necessary action to mitigate the situation and prevent a reoccurrence of detriment.

*G.3.7.17 The Manufacturer may identify an issue with any of its Retail Products during regular product monitoring exercises, but also when Manufacturers are informed of the matter by Distributors or even through a complaint lodged directly by a Client.*

R.3.7.49 The Manufacturer shall also take appropriate remedial action when concerns about the appropriateness of a distribution channel are raised.

R.3.7.50 Whenever such circumstances are encountered, Manufacturers shall take appropriate action which may consist of:

- a. promptly notifying the Distributor of changes or modifications to the existing products and any additional actions that need to be taken to remedy the situation;
- b. the provision of the same relevant information referred to in indent (a) above on the circumstances encountered and any consequences on the Retail Products to the Clients if the Manufacturer sells the Retail Product directly to Clients;
- c. making adjustments to the product approval process;
- d. stopping the provision of the Retail Product/s in question;
- e. amending the Retail Product to avoid unfair contract terms;
- f. considering whether the sales channels through which the Retail Products are sold or distributed are appropriate where Regulated Persons become aware that Retail Products are not being sold as envisaged;
- g. terminating the relationship with the Distributor/s; or
- h. informing the MFSA.

R.3.7.51 The Manufacturer can only make changes to the Retail Product that are consistent with the interests, objectives and characteristics of the already existing Target Market. These changes however shall not result in an adverse impact on the Clients to which the Retail Product has already been sold.

## Section 8: Target Markets

### 8.1 General Requirements



- R.3.8.52 Manufacturers shall include, in their PGOP, steps and features that need to be followed to identify, and update when necessary, the relevant Target Market of a Retail Product.
- R.3.8.53 The Manufacturer shall, having first identified the Target Market, ensure that the Retail Product is deemed appropriate for the interests, objectives and characteristics of the identified Target Market(s).
- R.3.8.54 Since the Manufacturer may in some instances not have direct Client contact, the Target Market identification may be based on theoretical knowledge and experience of the Retail Product. Moreover, where applicable, the Manufacturer shall receive and consider any relevant feedback from its Distributor/s when identifying the Target Market of a specific Retail Product.
- R.3.8.55 A Manufacturer shall only design and market Retail Products that are compatible with the needs, characteristics and objectives of the Clients belonging to the identified Target Market. When assessing whether a Retail Product is compatible with a Target Market, the Manufacturer shall take into account:
- a. the Client category in question (including their interests and spending habits);
  - b. demographic data (including age and gender);
  - c. potential interest in the product (including pricing policy);
  - d. the level of information available to the intended Target Market and the experience required to understand the Retail Product and its intended purpose;
  - e. the financial objectives and financial literacy of the intended Target Market;
  - f. whether the Retail Product design is driven by features that benefit the Client and not by a business model that relies on poor Client outcomes to be profitable; and
  - g. the risk profile of the Target market.
- R.3.8.56 In addition to R.3.8.55, when deciding whether or not a Retail Product meets the interests, objectives and characteristics of a particular Target Market, the Manufacturer shall assess the degree of financial capability of the Target Market.
- R.3.8.57 The Manufacturer shall consider how the Retail Product fits within the Manufacturer's existing product range and whether the presence of too many product variants prevents the Client from making informed decisions.

- R.3.8.58 The identification of the potential Target Market shall be done in an appropriate and proportionate manner, considering the nature, features, charges and risks of the Retail Product in question.
- R.3.8.59 The Manufacturer shall only design and bring to the market Retail Products with features, charges and risks, that meet the interests, objectives and characteristics of, and are of benefit to, the particular Target Market identified for the Retail Product.
- R.3.8.60 Consequently, for more complex Retail Products, the Target Market should be identified in more detail and in all cases the Target Market must be identified at a sufficiently granular level to avoid the inclusion of any groups of Clients for whose needs, characteristics and objectives the Retail Product would not be compatible.
- G.3.8.18 To identify the Target Market, a Manufacturer shall not rely solely on quantitative criteria but needs to sufficiently balance them with qualitative considerations.*
- R.3.8.61 The Manufacturer shall ensure that its intended distribution strategy is consistent with the identified Target Market and has to take reasonable steps to ensure that the Retail Product is distributed to the identified Target Market. The Manufacturer shall therefore define its distribution strategy in such a way which favours the sale of each Retail Product to the appropriate Target Market.
- R.3.8.62 Manufacturers shall consider the charging structure proposed for Retail Products and shall ensure that:
- a. the fees, charges and expenses applicable to Retail Products are compatible with the needs, objectives and characteristics of the Target Market; and
  - b. the charging structure of Retail Products is appropriately transparent for the Target Market in such a way that it does not disguise charges, expenses or fees or is too complex to understand.
- G.3.8.19 The Manufacturer's identification of the Target Market is crucial to enable Distributors to understand to whom the Retail Products can be sold.*
- R.3.8.63 Should a Distributor approach its Clients or prospective Clients in any way or recommend or actively market a Retail Product, then a thorough assessment of whether such Client or prospective Client falls within that Retail Product's intended Target Market shall always be conducted by the Distributor before that Retail Product is sold.

R.3.8.64 In determining whether a Client or prospective Client falls within the intended Target Market, the Distributor shall use any information and data deemed reasonably useful and available for this purpose that may be at the Distributor's disposal.

*G.3.8.20 Depending on the information obtained about the Client's circumstances during the individual sales or advice process, the Distributor may decide that a Retail Product is inappropriate for a Client despite that Client falling within the identified Target Market for that Retail Product. Therefore, a Retail Product should not be sold to a Client solely on the basis of the Client being a member of the Target Market.*

## 8.2 Negative Target Market

R.3.8.65 The Manufacturer shall also identify the market segments for which the Retail Product is considered not likely to meet their interests, objectives and characteristics, termed the 'Negative Target Market'.

*G.3.8.21 The Manufacturer shall also consider whether the Retail Product would be incompatible with certain target Clients, termed the 'Negative Target Market'. In line with the approach followed for the identification of the 'Positive' Target Market, the Manufacturer, after receiving feedback from the Distributor, where applicable, shall determine the group of Clients to whom it shall not distribute that specific Retail Product and whose needs, characteristics and objectives would not be compatible with a specific Retail Product.*

*G.3.8.22 The Manufacturer, after having considered any Distributor feedback, can define the Negative Target Market by stating that the Retail Product or Service in question is incompatible with Clients within the Positive Target Market. This would be the case when some of the Target Market characteristics used in the Positive Target Market assessment by Manufacturers automatically lead to opposing characteristics for Clients for whom the Retail Product is not compatible.*

*G.3.8.23 There might be situations where Retail Products could, under certain circumstances and where all other legal requirements are met (including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest), be sold outside the Positive Target Market. However, as the Negative Target Market is an explicit indication of those Clients for whose needs, characteristics and objectives the Retail Product is not compatible and to whom the*

*Retail Product should not be distributed, the sale to Clients within this group shall be a rare occurrence and shall be documented accordingly. These instances shall be justified by the individual facts of the case, with the reason for the deviation being clearly documented.*

- R.3.8.66 A Distributor shall sell a Retail Product to a Client who does not belong to the Target Market only on a justified basis. The Distributor shall also be able to provide information to justify to the Manufacturer why it offered a Retail Product to a Client who does not belong to the Target Market.
- R.3.8.67 Manufacturers and Distributors shall analyse ex-ante situations and make responsible decisions on how they are going to address them should they occur. Client-facing employees shall be informed of the approach defined at Management Body level, so that they can comply with it. Manufacturers and Distributors shall also take into consideration the nature of the Retail Products included in the range of those they intend to offer to Clients and the existence of any conflicts of interest with Clients, as well as their business model.
- R.3.8.68 If the Distributor becomes aware that the sale of a certain Retail Product outside the identified Target Market has become a significant phenomenon, it shall communicate its findings to the Manufacturer without delay. This input shall be taken into due consideration by the Manufacturer in the course of its periodic review of the Retail Products and related Services offered. In such cases, the Manufacturer may come to the conclusion that the Target Market originally identified was not correct and that it needs to be reviewed, or that the related distribution strategy was not appropriate for the Retail Product and therefore has to be reconsidered by taking remedial action as necessary.

## Section 9: Provision of Adequate Training to Relevant Staff

- R.3.9.69 Regulated Persons, whether acting as Manufacturers or Distributors, must provide adequate training, including cross-sectorial training when relevant, to staff involved in but not limited to:
- designing and monitoring the Retail Products;
  - determining and implementing remedial actions;
  - identifying Target Markets;
  - developing distribution channels;

- e. creating the retail strategy;
- f. distributing Retail Products in accordance with the Manufacturer's Product Governance and Oversight Arrangements.

The purpose for providing this training is to ensure that staff are familiar with the risks, where relevant, of the Retail Products and are able to communicate these to Clients in plain non-technical language.

## Section 10: Role of Senior Management and the Management Body

- R.3.10.70 The Manufacturer shall ensure that the PGOP is an integral part of its governance, risk management and internal control framework as referred to in [EBA/GL/2021/05](#), where applicable. To that end, the Manufacturer's Management Body shall endorse the establishment of the PGOP and its subsequent reviews.
- R.3.10.71 Senior Management, with support from representatives of the Manufacturer's compliance and risk management functions, shall be responsible for continued internal compliance with the PGOP. They shall periodically check that the PGOP is still appropriate and continues to meet the objectives as set out in R.3.2.16, and shall propose to the Management Body that the arrangements be amended if this is no longer the case.
- R.3.10.72 The responsibilities for the oversight of this process by the risk control function and the compliance function shall be integrated into their normal line of duties.
- R.3.10.73 The Manufacturer's Senior Management shall ensure that staff involved in designing a Retail Product:
- a. are familiar with and follow the arrangements included in the Manufacturer's PGOP;
  - b. are competent and appropriately trained; and
  - c. understand and are familiar with the product's features, characteristics and risks.
- R.3.10.74 The Manufacturer shall ensure that the compliance and risk reports to its Management Body systematically include information about the Products manufactured by the Manufacturer, including information on

the distribution strategy. The Manufacturer shall make the reports available to the MFSA upon request.

*G.3.10.24 The Manufacturer's Senior Management shall ensure that the PGOP is appropriately designed and implemented into the governmental structures of the Manufacturer.*

*G.3.10.25 The Manufacturer's Senior Management can consider involving any relevant functions in the establishment and subsequent reviews of the PGOP.*

## Section 11: Product Distribution and Distribution Channels

R.3.11.75 Manufacturers shall adopt appropriate procedures regarding distribution arrangements and distribution channels for its Retail Products as part of its PGOP, which shall be in writing and reviewed periodically. Such policies and procedures shall as a minimum cover the following:

- a. different roles and responsibilities of the different parties participating in the manufacturing and distribution of Retail Products;
- b. the Manufacturer's obligation to provide information intended to assist Distributors in identifying conditions when Retail Products are to be distributed to the identified Target Market and the limited conditions under which Retail Products can be distributed outside the Target Market; and
- c. flagging of any key risks.

R.3.11.76 The Manufacturer shall carefully select distribution channels that are appropriate for the particular Target Market. To that end, the Manufacturer should select Distributors that have the appropriate knowledge, expertise and capability to correctly place each Retail Product in the market and to provide appropriate information explaining the characteristics and risks of the Retail Product to the Clients. When selecting its distribution channels, the Manufacturer may consider limiting the distribution of a specific Retail Product to channels that offer specific features to Clients.

- R.3.11.77 The Manufacturer shall monitor that the Retail Products are distributed to the identified Target Market and sold outside the Target Market only on a justified basis.
- R.3.11.78 The Manufacturer shall take all reasonable steps to ensure that Distributors act in compliance with the objectives of the Manufacturer's PGOP. The Manufacturer shall take appropriate action when concerns about the appropriateness of a distribution channel are raised, for example by ceasing to use the particular channel for a particular product. In particular, the Manufacturer shall ensure, on an ongoing basis that the Retail Products reach mainly the particular intended Target Market through the distribution channels used.
- R.3.11.79 This monitoring obligation by the Manufacturer shall not extend to the general regulatory requirements with which Distributors have to comply when carrying out distribution activities for individual Clients. The monitoring activities shall be reasonable, taking into consideration the characteristics and the legal framework of the respective distribution channels.
- G.3.11.26 Manufacturers should ensure that Distributors commit to the following steps:*
- a. verifying that the Retail Products are in line with the needs, characteristics and objectives of the Clients within the Target Market;*
  - b. providing adequate training to their staff so they can sell the Retail Product to the correct Target Market;*
  - c. maintaining the Retail Product they distribute unmodified;*
  - d. using only product documentation approved by the Manufacturer;*
  - and*
  - e. monitoring conduct of sales staff.*
- R.3.11.80 Where relevant, the Manufacturer shall provide the Distributor with:
- a. a description of the main characteristics of the Retail Product;
  - b. its risks and any limitations;
  - c. the total price of the Retail Product (as known, or reasonably expected to be known by the Manufacturer) to be borne by the Client, including implicit costs, related fees, charges and expenses;
  - d. details regarding the product approval process;
  - e. the identified Target Market and the Target Market assessment undertaken;
  - f. the suggested distribution strategy; and
  - g. any circumstances which might cause a conflict of interest to the detriment of the Client.



- R.3.11.81 The information indicated under R.3.11.80 shall be of an adequate standard and shall be clear, precise and up-to-date.
- R.3.11.82 The Manufacturer shall ensure that the information given to the Distributor includes all relevant details to enable them to:
- a. understand and place the Retail Product properly on the market;
  - b. recognise the Target Market for which the Retail Product is designed; and
  - c. recognise market segments whose objectives, interests and characteristics are considered likely not to be met.
- R.3.11.83 As part of defining a distribution strategy for Retail Products, the Manufacturer shall determine the extent of the Client information necessary for the Distributor to properly assess and effectively pinpoint the Target Market for its Retail Products.
- R.3.11.84 A Distributor shall take into account the information provided by the Manufacturer and disclose to the Client a description of the main characteristics of the Retail Product, its risks and the total price of the Retail Product to be paid by the Client, including all related fees, charges, and expenses, as well as providing additional material supplied by the Manufacturer to be used by the Target Market.
- R.3.11.85 The Distributor shall take into account the distribution strategy identified by the Manufacturer and review it with a critical insight.

## Section 12: Review of Product Distribution Arrangements and Distribution Channels

- R.3.12.86 Manufacturers are required to review their product distribution arrangements and distribution channels as part of their PGOP review to ensure that those arrangements are still valid and up to date and shall amend them where appropriate. In particular, Manufacturers shall assess whether the distribution strategy remains appropriate and consistent with the needs, characteristics and objectives of the identified Target Market.
- R.3.12.87 Manufacturers shall consider, on a proportionate basis, what information they need to obtain from Distributors in order to complete

their review and how to gather that information. Relevant information could include, for example, information on which distribution channels have been employed; the proportion of sales made outside the target market; summary information on the types of Client; a summary of any complaints received; and questions suggested by the Manufacturer to a sample of Clients for feedback. Such information may be in an aggregated form and does not need to be on a product-by-product or sales-by-sales basis.

R.3.12.88 In order for the Manufacturer to conduct adequate reviews, the Distributor must make available information on sales and, where appropriate, any other relevant information that may be the outcome of the Distributor's own periodic review. Furthermore, the Distributor shall consider data and information that may give an indication that the Manufacturer has wrongly identified the Target Market for a specific Retail Product or Service, or that the Retail Product or Service no longer meets the circumstances of the identified Target Market.

R.3.12.89 In relation to the reporting of information on sales outside the Manufacturer's Target Market, the Distributor shall communicate any decisions they have taken to sell outside the Target Market in line with the policies and guidelines set out by the Manufacturer.

## Section 13: Additional Product Oversight and Governance obligations applicable to Distributors

R.3.13.90 The Rules and Guidelines in this section shall apply solely to Distributors in addition to the other Rules and Guidelines which have been established in previous sections of this Chapter.

R.3.13.91 The Distributor shall establish, implement and review effective product oversight and governance arrangements which are specific and proportionate to its size and to its role of bringing Retail Products to the market. The arrangements shall be designed to ensure that, when bringing products to the market, the interests, objectives and characteristics of Clients are appropriately taken into account; that potential Client detriment is avoided; and that conflicts of interest are minimised.

R.3.13.92 The Distributor shall review and update the product oversight and governance arrangements on a regular basis.

- R.3.13.93 In the interest of clarity, the Distributor's product oversight and governance arrangements must consider its obligations as included in this Section and previous Sections throughout this Chapter.
- R.3.13.94 The Distributor shall also ensure that its product oversight and governance arrangements are clearly communicated and constantly available to its relevant staff.
- R.3.13.95 The Distributor shall ensure that its product oversight and governance arrangements are an integral part of its general systems and controls. To that end, its Management Body, if relevant, shall endorse their establishment and subsequent reviews.
- R.3.13.96 As part of its product oversight and governance arrangements, a Distributor shall ensure that it obtains from the Manufacturer:
- a. all appropriate information on the Retail Products for considering the range of Retail Products and Services intended to be offered to Clients, including their main features and characteristics, level of complexity, as well as their risks, limitations and costs to be borne by the Client;
  - b. the identified Target Market for each Retail Product and the defined distribution strategy; and
  - c. any circumstances which might cause a conflict of interest to the detriment of the Client.

The above information is intended to assist the Distributor in assessing to which Clients it may advertise and promote the individual Retail Products.

- R.3.13.97 The information obtained by the Distributor in terms of R.3.13.96 shall be clear, complete and up-to-date.

*G.3.13.27 In addition to R.3.13.96, the Distributor's arrangements shall also enable it to receive all Retail Product related information about which the Distributor is required to inform the Clients.*

*G.3.13.28 The Distributor shall use the information provided by the Manufacturer and shall have relevant knowledge and ability to determine whether a Client belongs to the Target Market. The Distributor shall in particular take due account of all relevant information allowing it to recognise the Target Market for which the Retail Product is designed, and also to recognise market segments for which the Retail Product is considered likely not to meet their interests, objectives and characteristics.*

- R.3.13.98 In addition to its obligations under R.3.8.68, the Distributor's product oversight and governance arrangements shall specify that it shall inform the Manufacturer without undue delay when it becomes aware that the Retail Product is not aligned with the interests, objectives and characteristics of the identified Target Market or if it becomes aware of other product related circumstances that may adversely affect the Client. To this effect, the Distributor shall, where appropriate, propose amendments to the distribution strategy for that Retail Product to the Manufacturer.
- G.3.13.29 In addition to its obligations under R.3.6.45 and R.3.6.46, the Distributor's product oversight and governance arrangements should contain procedures which detail and enhance the exchange of information between the Manufacturer and Distributor to facilitate the Retail Product monitoring obligations of the Manufacturer.*
- R.3.13.99 All actions taken by the Distributor in relation to its product oversight and governance arrangements shall be duly documented, kept for audit purposes and made available to the MFSA, or the Manufacturer, upon request.
- G.3.13.30 In addition to R.3.13.99, the Distributor shall also document all relevant information it has received from the Manufacturer.*
- G.3.13.31 Without prejudice to any other legal obligation, it is recommended that the records of the relevant documentation are kept in a Durable Medium for a minimum period of five years. The period starts when the relevant action is taken. There might be situations where it is appropriate to keep the documentation for a longer period of time, e.g. due to the lifetime of a Retail Product or the Target Market as defined by the Manufacturer itself.*

## Section 14: Other Product Governance Requirements for Credit Agreements relating to Residential Immovable Property

### 14.1 Applicability

R.3.14.100 The Rules and Guidance under this Section shall solely apply to Credit Agreements relating to Residential Immovable Property as set out in the Glossary of Definitions to this Rulebook. The term Credit Agreements within this Section shall therefore be construed as a reference to Credit Agreements relating to Residential Immovable Property.

## 14.2 Conduct of Business Obligations when providing Credit to Clients

R.3.14.101 When manufacturing credit products falling within the scope of this Section, or granting, intermediating or providing Advisory Services on credit and, where appropriate, Ancillary Services to Clients or when executing a Credit Agreement, the Regulated Person and/or the Credit Intermediary shall act honestly, fairly, transparently and professionally, taking account of the rights and interests of the Clients:

Provided that in relation to the granting, intermediating or provision of Advisory Services on credit and, where appropriate, of Ancillary Services, the activities shall be based on information about the Client's circumstances and any specific requirement made known by a Client and on reasonable assumptions about risks to the Client's situation over the term of the Credit Agreement;

Provided further that in relation to such provision of Advisory Services, the activity shall in addition be based on the information required under R.1.2.101(a).

R.3.14.102 Regulated Persons and Credit Intermediaries shall ensure that the manner in which their Staff and the relevant Credit Intermediaries are remunerated does not impede compliance with the obligation to act in accordance with the obligation set out in R.3.14.101.

R.3.14.103 When establishing and applying remuneration policies for Staff responsible for the assessment of creditworthiness, Regulated Persons shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

- a. the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the Regulated Person; and

- b. the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the Regulated Person, and incorporates measures to avoid conflicts of interest, in particular by providing that remuneration is not contingent on the number or proportion of applications accepted.

R.3.14.104 Regulated Persons and Credit Intermediaries providing Advisory Services shall ensure that the remuneration structure of the Staff involved does not prejudice their ability to act in the Client's best interest and in particular is not contingent on sales targets.

### 14.3 Foreign Currency Loans

R.3.14.105 Where a Credit Agreement relates to a foreign currency loan, the Regulated Person shall, at least, ensure that:

- a. It has an appropriate framework in place, particularly at the time the Credit Agreement is concluded, to ensure that the Client has a right to convert the Credit Agreement into an alternative currency under specified conditions;
- b. It has arrangements in place to limit the exchange rate risk to which the Client is exposed under the Credit Agreement.

R.3.14.106 In accordance with R.3.14.105, the alternative currency shall be:

- a. the currency in which the Client primarily receives income or holds assets from which the credit is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the Credit Agreement was made; and/or
- b. the currency of the Member State in which the Client either was resident at the time the Credit Agreement was concluded or is currently resident.

R.3.14.107 Where a consumer has a right to convert the Credit Agreement into an alternative currency in accordance with R.3.14.105, the exchange rate at which the conversion is carried out shall be the market exchange rate applicable on the day of application for conversion unless otherwise specified in the Credit Agreement.

R.3.14.108 Where a Client has a foreign currency loan, the Regulated Person shall warn the Client on a regular basis on paper or on another Durable Medium at least where the value of the total amount payable by the Client which remains outstanding or of the regular instalments varies by more than 20% from what it would be if the exchange rate between the

currency of the Credit Agreement and the currency of the Member State applicable at the time of the conclusion of the Credit Agreement were applied. The warning shall inform the Client of a rise in the total amount payable by the Client, set out where applicable the right to convert to an alternative currency and the conditions for doing so and explain any other applicable mechanism for limiting the exchange rate risk to which the Client is exposed.

R.3.14.109 Credit Agreements relating to a foreign currency loan in terms of R.3.14.105 to R.3.14.108 shall be disclosed to the Client in the ESIS and in the Credit Agreement. Where there is no provision in the Credit Agreement to limit the exchange rate risk to which the Client is exposed to a fluctuation in the exchange rate of less than 20%, the ESIS shall include an illustrative example of the impact of a 20% fluctuation in the exchange rate.

R.3.14.110 Where the Credit Agreement allows for variations in the borrowing rate, Regulated Persons shall inform Clients of the possible impacts of variations on the amounts payable and on the APRC at least by means of the ESIS, by providing the Client with an additional APRC which illustrates the possible risks linked to a significant increase in the borrowing rate;

Provided that where the borrowing rate is not capped, the Information referred to in this Rule shall be accompanied by a warning highlighting that the total cost of the credit to the Client, shown by the APRC, may change; and

Provided further that this Rule 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 APRC is provided for in the ESIS.



## Annex I – Good Practice Examples

Good practice examples relate to the conduct of Manufacturers' and Distributors' tasks towards particular product oversight and governance arrangements that, if applied, will enhance consumer protection and will, as such, also contribute to ensuring the effectiveness of the financial system more generally. These approaches are considered good examples and are aimed at promoting common practices amongst Regulated Persons.

### Good Practice Examples for Manufacturers

#### Establishment, Proportionality, Review and Documentation

1. A limit for regular review and update could be established, and/or factors that are relevant to the regularity of the review should be identified, e.g. significant changes in retail strategy, complexity of the product lines, complexity of distribution methods and distribution chain.
2. Avoiding relying on a single criterion to define whether a Retail Product is new or significantly changed, and considering instead the following set of criteria:
  - a. significant changes in the processing of the Retail Product including an extension of the product distribution, the introduction of new, or the withdrawal of existing, Retail Product or Service features;
  - b. a change in the Target Market and the introduction of a new Client market segment (including geographically) as a Target Market;
  - c. changes that affect the use of the Retail Product by the Client on a day-to-day basis;
  - d. changes for which the Client would reasonably perceive there to be a change in the level of service compared with what is currently being provided;
  - e. change in one or more material features that alter the risk profile of the Retail Product from a Client perspective and the complexity of the Retail Product.
  - f. a change in the sale conditions, a new distribution channel or the introduction of an alternative channel of selling, including the use of third parties for the sale of the Retail Product;
  - g. significant modifications to the Retail Product pursuant to new legal or regulatory rules and standards;
  - h. material changes to related processes (e.g. new outsourcing arrangements) and systems (e.g. IT change processes), but only if such changes have an impact on Clients.

3. Explicitly defining negative criteria (i.e. what a new or significantly changed Retail Product is not) and providing and recording the rationale for deciding that a Retail Product is not new or significantly changed.

## Manufacturer's Internal Control Functions

4. Having defined structures and clear escalation lines and involving the risk and compliance functions. However, a process owned by the compliance or risk function is not good practice, as it may lead to that function losing some of its required independence. Process is expected to be piloted by compliance function.
5. Having specific work-flow documents and/or checklists that need to be followed to ensure that the process followed is the same for all Retail Products and that there is a clear audit trail, for example setting up a centralized documentation tool that clearly defines the roles and responsibilities of the different units and key staff involved in the product oversight and governance process. To ensure that Client needs are being considered during the process, seeking views from Clients during the design phase of the Retail Product, for instance through Client working groups or documenting the impact of the Retail Product on any potential Clients throughout all stages of the product lifecycle and monitoring complaints and errors about the Retail Products.

## Target Market

6. Manufacturers could consider the following set of criteria based on Client segmentation to ensure that the Retail Product is deemed appropriate for the interest, objectives and characteristics of the Target Market, such as:
  - a. liquidity accessibility that the Client is expected to get;
  - b. the characteristics of the respective Retail Product in relation to the Client's risk aversion profile, taking into consideration the Client's financial situation;
  - c. demographic factors (e.g. age of the Client);
  - d. potential creditworthiness or financial capability of the Client and the latter's level of knowledge of such financial capability; or
  - e. relevant legislation.

In the case of Credit Agreements, Clients could be provided with different scenarios or simulations of the amount of payment of the Credit Agreement depending on the variation of the interest rate.

In the case of other Retail Products, an assessment could take account of the various competing product features, such as accessibility, yield and security, and

whether the combination of these met the said interests, objectives and characteristics of the Target Market.

7. Varying the assessment depending on the risk borne by the Client and the degree of complexity and the nature and characteristics of the Retail Product. When identifying whether a new or significantly changed Retail Product would be beneficial to Clients, giving further consideration to the nature, cost and added value of the Retail Product and whether or not the Retail Product is unnecessarily complex.
8. Creating a product review template that requires the product owner / product development and/or business unit to clearly outline what measures are in place to ensure that sales are not made to non-Target Market Clients. The product approval template could be designed in a way that necessitates internal mandatory approvals.
9. Analysing whether Clients for a particular Target Market need such Retail Product or Service. Thus, the Manufacturer can rely even more on Clients' feedback, for example on Client satisfaction surveys, before the development of the Retail Product and after the product launch, focus groups for the design of the innovative Retail Product, etc.
10. Giving further consideration to innovation in the development of product oversight and governance processes, for example when targeting a broad Target Market and developing an existing Retail Product, some further consideration should be given to certain groups of Clients who lack financial literacy and technology expertise to prevent financial exclusion. Indeed, new Retail Products and Services are often seen as offering new opportunities for Clients but certain categories of Clients cannot, or do not want, to use those new services.
11. Taking into account that digital channels have been identified as a factor that facilitates access to credit by Clients, giving further attention to the risks that Clients might face due to the increasing use of digital channels when improving their product oversight and governance processes.

## Product Testing

12. In the case of a Credit Agreement with a variable interest rate, the assessment could include the Client's repayment requirements at reasonably higher interest rates. On the other hand, in the case of Deposit based Retail Products, this could include, but is not limited to, the accessibility, yield and security of funds, as well as any guarantee scheme that might apply.

13. In addition, consideration of the following testing phases can also be made:
  - a. progressive testing, that includes all newly developed features and processes;
  - b. regressive testing, that includes retesting of all existing features to ensure that new development does not break what already exists;
  - c. post-implementation testing that includes for example that, after the development, end-users test the Retail Product before its launch in production so that where an evaluation of the user experience and user interface can take place.

In line with the principle of proportionality, when Retail Products are simple and have very broad Target Markets, testing could also focus on whether Clients know and understand what they are buying and on planned Client communication. By contrast, for more complex Retail Products or Retail Products that may be riskier for Clients, such as credit products, identified scenarios will be tested with a view to identifying the way in which the intended Target Market would be affected.

14. Including testing methodologies within the Manufacturer's product oversight and governance policy, for example creating a centralized documentation tool with a clear definition of the roles and responsibilities of the different units in terms of product oversight and governance and an explanation of the performance of a catalogue testing to avoid overlaps among Retail Products offered.
15. Formalising a framework/tool (e.g. using business analysis tool to track the environment in which the Regulated Person is operating or is planning to launch a new project/product/service) to undertake an assessment of the current and potential future impact of the external environment on product performance to inform product testing (stress/scenario/simulation). It could also be done by the use of customer research and pilot (or limited) releases to assess the way in which the Retail Product would affect the Target Market. It could enable the Manufacturer to assess the position of a new Retail Product in the light of the Manufacturer's product offerings, to identify, among other things, possible overlaps and any resultant confusion for Clients.
16. Testing a number of scenarios with a simulation of the provision of Retail Products or Services, during which potential Clients could express their views at each of the steps taken, to get an objective feedback on the process.
17. Inclusion of testing against the Negative Target Market (e.g. whether individuals below the age of 18 years could apply for an access the Retail Product when only Clients aged over 18 years are targeted) and testing of different communication channels.

## Product Monitoring

18. The Manufacturer could make changes to product features such as charges, interest rates, and applicability of protection schemes only if such changes were consistent with the interests, objectives and characteristics of the Target Market.
19. Having regular reviews and establishing specific frequencies for such reviews on product monitoring are good practice, including when the frequency of the review is dependent on the riskiness for customers and/or the complexity or the specific features of the product. Carrying out more frequent monitoring of more complex and risky Retail Products and always taking specific measures to solve the situation identified if a problem is identified with a specific Retail Product.
20. Undertaking lifecycle reviews more frequently based on the output of ongoing monitoring of Retail Products and Services. When implementing their PGOP, Manufacturers may consider giving explicit considerations to the result of the monitoring for the Retail Product classification (e.g. in order to prioritize remedial initiatives). For example, where a Client-impacting event is identified, the event could be graded as Tier 1, 2 or 3 or similar manner. If a Tier 1 event occurs at any time during the lifecycle of a Retail Product or Service, then the next scheduled review would include a recommendation from the relevant product committee about whether to bring forward the next scheduled review period. The post-product-review process would require that a lessons learnt review is undertaken and presented to the relevant product committee, in a period of for instance, 6 months after the withdrawal of every material Retail Product.

## Remedial Action

21. A remedial action could be taken when the Retail Product no longer meets the general needs of the Target Market or when the product performance significantly differs from what the Manufacturer originally expected and in a way that causes Client detriment.
22. Including Client centric information such as direct consumer feedback. This could include the analysis of statistical indicators measuring Client behaviour and Client activity as well as an analysis of Client complaints received in order to better gauge any necessary remedial action that might be necessary.

## Distribution Channels

23. In the case of credit-based Retail Products, the Manufacturer could monitor the sales volumes across various risk characteristics, such as loan-to-income ratios

and loan-to-value ratios and, where possible, conduct a comparison of such characteristics between sales made by its own staff and those made by external distribution channels.

24. Determining whether the distribution channels are appropriate by assessing the following elements which focus on interests, objectives and characteristics of Clients:
  - a. the identified target group with consideration for the needs, knowledge and financial capability of the Clients;
  - b. the knowledge, expertise and capability of the Distributor to market the Retail Products and Services correctly; and
  - c. the information provided to the Clients, checking if the relevant information has been provided to the Clients including information about the Retail Product's characteristics and risks.
25. Manufacturers ensure that the Distributors commit to the following steps:
  - a. verifying that the Retail Products are in line with the needs, interests, objectives and characteristics of the Clients within the Target Market;
  - b. providing adequate training to staff so they can sell the Retail Product to the correct Target Market;
  - c. Distributors maintain the Retail Product they distribute in an unmodified form;
  - d. using only product documentation approved by the Manufacturer; and
  - e. Distributors monitor the conduct of their sales staff.

## Good Practice Examples for Distributors

26. Distributors should ensure that they commit to the following steps:
  - a. verifying that the Retail Products are in line with the needs, interests, objectives and characteristics of the Clients within the Target Market;
  - b. providing adequate training to staff so they can sell the Retail Product to the correct Target Market;
  - c. maintain the Retail Product they distribute in an unmodified form;
  - d. using only product documentation approved by the Manufacturer; and
  - e. monitor the conduct of their sales staff.
27. Distributors should have sufficient knowledge of the Target Market. In the case of Deposit based Retail Products, the Distributor could take account of the various competing product features, such as accessibility, yield and security, and whether the combination of these meet the said interests, objectives and characteristics of the Target Market.
28. Distributors should have a clear policy on how to respond to selling outside the Target Market.

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## Chapter 4 Conflicts of Interest

### Introduction

In the course of providing services to their Clients, circumstances may arise through which a potential or actual conflict of interest may cause a material risk to one or more of the Regulated Person's Clients. More specifically, a conflict of interest exists if a decision-making party is to some degree biased in favour one specific outcome over any other. Situations of conflicts of interest therefore refer to those circumstances which have an impact on the Regulated Person and its ability to perform objectively and fairly with respect to one or more Client. Consequently, such situations must be addressed appropriately in order to ensure that Regulated Persons always operate in the best interest of their Clients.

From a conduct of business perspective and with respect to Regulated Persons in scope of this Rulebook, the mis-selling of Retail Products can lead to significant Client detriment. This chapter aims to address any shortcomings and requires Regulated Persons offering Retail Products to have in place adequate measures in identifying, managing and, as a means of last resort, reporting instances of conflicts of interest. The applicable framework should give Clients peace of mind that Regulated Persons are bound to implement measures which take account of the interests of the Client, based on the information available to the Regulated Person at that moment in time, including reasonable assumptions relating to the Client's situation and the Retail Product/s being proposed. A key aspect of ensuring such consumer confidence is the requirement to ensure a high degree of fairness, honesty and professionalism in the industry; appropriate management of conflicts of interest including those arising from remuneration; as well as the overarching obligation that the service is to be provided in the best interests of the Client.

The chapter covers the key principles Regulated Persons must nurture through the applicability of their various policies and procedures in order to empower all staff and management alike to constantly act in the best interest of Clients. Indeed, the chapter distinguishes between general requirements and those specific for certain categories of staff.

The element of remuneration is also covered in this chapter in so far as it may give rise to conflicts between the Regulated Person's commercial interest and its duties to act in the best interest of its Clients. Subsequently, a focus on remuneration policy rules, including aspects such as approval, design features, documentation and oversight, are addressed due to the high degree of interoperability between remuneration and conflicts of interest policies.

The chapter concludes with reference to a number of general obligations around record keeping requirements and elements of oversight in so far as they relate to conflicts of interest.

## Section 1: General Rules

R.4.1.1 A Regulated Person shall act honestly, fairly and professionally in accordance with the best interests of its Clients.

R.4.1.2 The Regulated Person shall avoid over-reliance on disclosure of conflicts of interest, thereby ensuring that disclosures to Clients are utilised as a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the Regulated Person to prevent or manage conflicts of interests are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of Clients will be prevented.

R.4.1.3 For the purposes of a disclosure of conflicts of interest, the Regulated Person shall do all the following:

- a. provide a specific description of the conflict of interest in question;
- b. explain the general nature and sources of the conflict of interest;
- c. explain the risks to the Client that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks;
- d. clearly state that the organisational and administrative arrangements established by the Regulated Person to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the Client will be prevented.

Provided that, the disclosure of conflicts of interest by a Regulated Person do not exempt it from the obligation to maintain and operate the organisational and administrative arrangements which are the most effective means of preventing damage to Clients.

R.4.1.4 A Regulated Person shall adopt appropriate and transparent reporting lines within its organisation or group, where applicable, to ensure that issues involving risks of non-compliance with conflicts of interest rules and wider conduct of business rules are given the necessary priority. The Management Body of the Regulated Person shall be promptly informed of such risks in order for them to take any necessary decision

to ensure that in any case the Regulated Person acts in the best interest of its Clients.

R.4.1.5 Those individuals employed by the Regulated Person who are involved in the decision-making process in providing a Retail Product shall declare any conflicts of interest that may arise in such decision-making, and abstain themselves from the approval process in line with the Regulated Person's Conflict of Interest Policy.

R.4.1.6 A Regulated Person shall establish, implement and maintain effective organisational and administrative arrangements appropriate to the size and organization of the Regulated Person and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its Clients.

R.4.1.7 Pursuant to R.4.1.6, a Regulated Persons should define, in a clear and transparent manner, the allocation of responsibilities and authority within the organisation, including within and between business lines, units and functions, including risk management. To this end, Regulated Persons should clearly define functions responsible for performing the various tasks related to credit risk taking and the credit decision-making process, specified in a way that does not lead to a conflict of interest and ensures the effective management of credit risk.

*G.4.1.1 Regulated Persons should ensure that there are effective Chinese walls in place between the different business areas of the Regulated Person, and between the Regulated Person and its connected parties, in relation to information which could potentially give rise to a conflict of interest or be open to abuse.*

*G.4.1.2 Regulated Persons should ensure that written procedures are in place relating to the maintenance of Chinese walls, and the consequences of breaches of Chinese walls. These procedures must be notified to all relevant officers and employees of the Regulated Person.*

R.4.1.8 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 Regulated Person or certain persons connected to the Regulated Person or the group of which the Regulated Person forms part, or from the performance of Services and activities, and the duty the Regulated Person owes to a Client.

G.4.1.3 It is not enough that the Regulated Person may gain a benefit if there is not also a possible disadvantage to a Client, or that one Client to whom

the Regulated Person owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such Client.

- R.4.1.9 Regulated Persons shall take all appropriate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers, employees and Credit Intermediaries, or any person directly or indirectly linked to them by control and their Clients or between the interests of one Client and another, including those caused by a Regulated Person's own remuneration and other incentive structures.
- R.4.1.10 For the purposes of identifying types of conflicts of interest that may adversely affect the interests of a Client, a Regulated Person shall take into account, by way of minimum criteria, whether the Regulated Person or a Relevant Person, or a person directly or indirectly linked by way of control to the Regulated Person, is in any of the following situations, whether as a result of providing Services or activities or otherwise:
- a. the Regulated Person or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the Client; or
  - b. the Regulated Person or that person has an interest in the outcome of a Service provided to the Client or of a transaction carried out on behalf of the Client, which is distinct from the Client's interest in that outcome; or
  - c. the Regulated Person or that person has a financial or other incentive to favour the interest of another Client or group of Clients over the interests of the Client.
- R.4.1.11 A Regulated Person shall establish, implement and maintain conflicts of interest policies and practices, including policies related to remuneration which ensure that remuneration practices adopted by the Regulated Person do not give rise to conflicts of interest which could, in the short, medium and long term adversely affect the interests of its Clients.

Further provisions on remuneration policies and practices are covered under the Section entitled Remuneration Policy Rules.

The Rules and guidelines set out in this Chapter shall be applicable to Regulated Persons without prejudice to, and in addition to, the requirements set out in [Banking Rule 21](#) on Remuneration Policies and Practices and EBA Guidelines on remuneration policies and practices related to the sale and provision of Retail Products and services ([EBA/GL/2016/06](#)).

- R.4.1.12 A Regulated Person shall not be regarded as fulfilling its obligations under R.4.1.1, or under R.4.1.6 where it pays or is paid any fee or commission, or provides or is provided with any non-monetary benefit in connection with the provision of a Service, to or by any party except the Client or a person on behalf of the Client, other than where the fee, commission, payment or benefit does not impair compliance with the Regulated Person's duty to act in the best interests of the Client.
- G.4.1.4 *Regulated Persons should take reasonable steps to ensure that it or any of its officers or employees does not offer, give, solicit or accept any gifts or rewards (monetary or otherwise) likely to conflict with any duties of the recipient in relation to his or her activities within the Regulated Person, or the Regulated Person itself.*
- G.4.1.5 *It is recommended that the Regulated Person should refer to the non-exhaustive list of scenarios provided in Annex I to this Chapter when cross-selling practices are deemed to be non-compliant with the requirements of R.4.1.1.*

## Section 2: Conflict of Interest Policy Rules

- R.4.2.13 The Management Body of a Regulated Person shall be responsible for establishing, approving and overseeing the implementation and maintenance of effective policies to identify, assess, manage and mitigate or prevent actual and potential conflicts of interest.
- R.4.2.14 Regulated Persons shall therefore establish, implement and maintain an effective Conflicts of Interest Policy set out in writing which is appropriate to the size and organisation of the Regulated Person and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its Clients.
- R.4.2.15 Where the Regulated Person is a member of a group, the policy shall also take into account any circumstances of which the Regulated Person is, or should be aware, which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.
- R.4.2.16 The Conflicts of Interest Policy established in accordance with R.4.2.14 shall be set out in writing and shall include the following:
- a. the identification of the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests

of one or more Clients, with reference to the specific Services carried out by or on behalf of the Regulated Person;

- b. procedures to be followed and measures to be adopted in order to manage such conflicts and to prevent such conflicts from damaging the interests of Clients.

R.4.2.17 Regulated Persons shall ensure that the procedures and measures provided for in R.4.2.16(b) are designed to ensure that Relevant Persons engaged in different business activities involving a conflict of interest of the kind specified in R.4.2.16(a) carry on those activities at a level of independence appropriate to the size and activities of the Regulated Person and of the group to which it belongs, and to the risk of damage to the interests of Clients.

R.4.2.18 For the purposes of R.4.2.16(b), the procedures to be followed and measures to be adopted shall include at least such of the following as are necessary for the Regulated Person to ensure the requisite degree of independence:

- a. effective procedures to prevent or control the exchange of information between Relevant Persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more Clients;
- b. the separate supervision of Relevant Persons whose principal functions involve carrying out activities on behalf of, or providing Services to, Clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the Regulated Person;
- c. the removal of any direct link between payments, including the remuneration of Relevant Persons principally engaged in one activity and the remuneration of, or revenues generated by, different Relevant Persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- d. measures to prevent or limit any person from exercising inappropriate influence over the way in which a Relevant Person carries out a Service;
- e. measures to prevent or control the simultaneous or sequential involvement of a Relevant Person in a separate Service where such involvement may impair the proper management of conflicts of interest.

R.4.2.19 For the purposes of R.4.2.16(b), the procedures to be followed and measures to be adopted shall also relate to any gifts and benefits policy, which should determine clearly under which conditions gifts and

benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

- R.4.2.20 If the adoption or the practice of one or more of the measures and procedures referred to in R.4.1.9 does not ensure the requisite degree of independence, a Regulated Person shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.
- R.4.2.21 The Regulated Person shall assess and periodically review, at least annually, the Conflicts of Interest Policy established in accordance with R.4.2.14, R.4.2.16, and R.4.2.17, R.1.1.67 and R.1.1.68 and shall take all appropriate measures to address any deficiencies. Over-reliance on disclosure of conflicts of interest shall be considered a deficiency in the Regulated Person's Conflicts of Interest Policy.
- R.4.2.22 Regulated Persons shall ensure that the Conflicts of Interest Policy contains appropriate internal alert procedures which allow Relevant Persons to report potential or actual breaches within the appropriate units of the Regulated Person. The alert procedure shall be made available to all staff within a Regulated Person.

## Section 3: Remuneration Policy Rules

### 3.1 General Requirements

- R.4.3.23 The provisions under this subtitle relating to the 'Remuneration Policy Rules' shall apply to all Relevant Persons within a Regulated Person who can have a material impact, directly or indirectly, on Services provided by the Regulated Person or on its corporate behaviour, to the extent that the remuneration of such persons and related non-financial incentives may create a conflict of interest that encourages them to act against the interests of the Clients.

*G.4.3.6 The Management Body of a Regulated Person should assume clear responsibilities across the business cycle of the Regulated Person, in the areas of the identification and definition of the strategic objectives, including the remuneration of sales Staff and the approval of new Retail Products for distribution to Clients.*



- R.4.3.24 Relevant Persons shall not be remunerated and shall not have their performance assessed in a way that conflicts with the Regulated Person's duty to act in the best interests of its Clients as set out in R.4.1.1, in particular, through remuneration, sales targets or otherwise which provide an incentive to itself or its employees for recommending or selling a particular Retail Product to a Client when another Retail Product may be better suited to meet the Client's needs.
- G.4.3.7 *Where a Regulated Person's remuneration policies and practices link remuneration directly to the sale of specific Retail Products or a specific category of such Retail Product, this could indicate that a Regulated Person is not in compliance with conduct of business or conflict of interest requirements.*
- R.4.3.25 Regulated Persons shall also ensure that the Management Body defines, approves and oversees a remuneration policy of persons involved in the provision of Retail Products and Services to Clients aiming to encourage responsible business conduct, fair treatment of Clients as well as avoiding conflict of interest in the relationships with Clients.
- R.4.3.26 In defining its remuneration policies, a Regulated Person shall ensure that:
- a. Clients are treated fairly, and their interests are not impaired by the remuneration practices adopted by the Regulated Person in the short, medium or long term;
  - b. remuneration policies and practices do not create a conflict of interest or incentive through any monetary and/or non-monetary forms of remuneration that may lead Relevant Persons to favour their own interests or the Regulated Person's interest to the potential detriment of Clients; and
  - c. Staff are not remunerated in a manner which impedes compliance with their obligation to act in good faith and with honesty and integrity.
- R.4.3.27 When designing remuneration policies and practices, a Regulated Person shall also take into consideration all relevant factors such as, but not limited to, the role performed by Relevant Persons, the type of Retail Product or Service offered and the methods of distribution, face-to-face or through telecommunications, in order to prevent potential conduct of business and conflict of interest risks from adversely affecting the interests of its Clients and to ensure that the Regulated Person adequately manages any related residual risk.

- R.4.3.28 When designing remuneration policies and practices, a Regulated Person 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 their Clients.
- R.4.3.29 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.4.3.30 When assessing performance for the purposes of determining variable remuneration, a Regulated Person should not only take sales volumes into account as this can create conflicts of interest which can ultimately result in detriment to the Client.
- R.4.3.31 A Regulated Person's remuneration policies and practices shall define appropriate criteria to be used to assess the performance of Relevant Persons, which assessment shall not be solely or predominantly based on quantitative commercial criteria, but shall be based on qualitative criteria encouraging the Relevant Persons to act in the best interests of the Client.
- R.4.3.32 In relation to R.4.3.28, Regulated Persons shall not design remuneration policies and practices that:
- a. solely link remuneration to a quantitative target for the offer or provision of Retail Products and services; or
  - b. promote the offer or provision of a specific Retail Product or category of Retail Products over other Retail Products, such as Retail Products which are more profitable for the Regulated Persons or for a Relevant Person, to the detriment of the Client.
- R.4.3.33 Where remuneration is, in whole or in part, variable, a Regulated Person's remuneration policies and practices shall define appropriate criteria to be used to align the interests of the Relevant Persons or the Regulated Person and that of the Clients.
- R.4.3.34 As further detailed in R.4.3.47 and associated guidance G.4.3.8 to G.4.3.10, a Regulated Person's remuneration policies and practices shall include and provide for the maintenance of measures enabling the Regulated Person to effectively identify where the Relevant Person fails to act in the best interests of the Client and to take remedial action.
- R.4.3.35 Relevant Persons shall be clearly informed, at the outset, of the criteria that will be used to determine the amount of their remuneration and the

steps and timing of their performance reviews. The criteria used by Regulated Persons to assess the performance of Relevant Persons should be recorded in a manner which is easily accessible and understandable.

- R.4.3.36 A Regulated Person should avoid creating unnecessarily complex policies and practices (such as combinations of different policies and practices, or multi-faceted schemes, which increase the risk that Relevant Persons' behaviour will not be driven to act in the best interests of Clients, and that any controls in place will not be as effective to identify the risk of detriment to the Client). This may potentially lead to inconsistent approaches and hamper proper knowledge or control of the policies by the compliance function.
- R.4.3.37 A Regulated Person shall ensure that the organisational measures it adopts regarding the launch of new Retail Products appropriately take into account their remuneration policy and the risks that these Retail Products may pose. In particular, before launching a new Retail Product, a Regulated Person shall assess whether the remuneration features related to the distribution of that Retail Product comply with the Regulated Person's remuneration policy and therefore do not pose conduct of business and conflicts of interest risks. This process shall be appropriately documented by Regulated Persons.
- R.4.3.38 A Regulated Person shall set up and maintain adequate controls to ensure compliance with its remuneration policies and practices to ensure that they deliver the intended outcomes.
- R.4.3.39 The remuneration policies and practices should be easily accessible to all relevant persons of the Regulated Person.
- R.4.3.40 The Management Body shall approve and retain ultimate responsibility for the Regulated Person's remuneration policies and practices.
- R.4.3.41 The Management Body shall also seek advice from the remuneration committee, where established, on the Regulated Person's remuneration policies and practices in relation to the fulfilment of R.4.3.23 to R.4.3.46.
- R.4.3.42 The compliance function of the Regulated Person shall confirm that the remuneration policies and practices comply with the requirements of this Section titled 'Remuneration Policy Rules'.

Specifically, the Compliance Officer of the Regulated Person shall verify that the Regulated Person's remuneration policies and practices comply

with conduct of business and conflicts of interest requirements, and shall therefore also have access to all relevant documents.

R.4.3.43 Changes to the remuneration policies and practices shall only be made with the approval of the Management Body.

R.4.3.44 A Regulated Person shall define and implement remuneration policies and practices under appropriate internal procedures taking into account the interests of all Clients. Regulated Persons shall review, at least annually, their remuneration policies and practices to ensure compliance with the requirements of R.4.3.23 to R.4.3.46.

In particular, where a Regulated Person identifies that a residual risk of Clients' detriment might arise as a result of the design of remuneration policies and practices as referred to above, the Regulated Person shall assess under the review, whether any of these residual risks are crystallising and causing detriment to Clients.

R.4.3.45 Where the review reveals that a Regulated Person's remuneration policies and practices do not operate as intended or prescribed, the Regulated Person shall amend its remuneration policies and practices in accordance with the requirements of R.4.3.23 to R.4.3.46.

R.4.3.46 Regulated Persons shall establish effective controls to check that their remuneration policies and practices are being adhered to, and to identify and address incidents of non-compliance with the requirements of R.4.3.23 to R.4.3.46.

## 3.2 Conflicts of Interest in the Remuneration Structures of Sales Staff

R.4.3.47 In addition to the requirement of R.4.3.24, Regulated Persons which distribute Tied or Bundled packages must ensure that suitable remuneration models and sales incentives encouraging responsible business conduct, fair treatment of Clients and avoidance of conflicts of interest for Staff selling the Tied or Bundled package are in place and are monitored by senior management.

*G.4.3.8 A Regulated Person should refrain from operating remuneration policies, practices and performance-based competitions that encourage sales Staff who may be remunerated on a commission basis to 'push' the sale of the Bundled package and which may therefore*

*encourage the unnecessary/unsuitable sales of either a component of the package or the package itself. For instance, if sales Staff were incentivised to cross-sell a loan with any financial product or service, then as a result of this remuneration structure, there would be the risk of incentivising a potential mis-selling of the loan and therefore also of the package.*

*G.4.3.9 A Regulated Person should avoid remuneration policies and practices which reduce sales' staff basic salary substantially if a specific sales target in relation to the Bundled or Tied package is not met; thereby reducing the risk that the sales person will make inappropriate sales of the Bundled package to avoid this outcome.*

*G.4.3.10 A Regulated Person should avoid reducing bonus or incentive payments earned by sales Staff because a sales target or threshold for the Bundled package has not been met.*

## Section 4: Record Keeping Requirements

**R.4.4.48** Regulated Persons shall keep and regularly update a record of the situations, Service or activity carried out by or on behalf of the Regulated Person in which a conflict of interest entailing a risk of damage to the interests of one or more Clients has arisen or, in the case of an ongoing Service or activity, may arise. Senior management shall receive on a frequent basis, and at least annually, written reports on situations referred to in this Rule.

**R.4.4.49** Regulated Persons shall establish specific arrangements and internal procedures enabling the Regulated Person to identify, classify and evaluate all types of fees, commissions and non-monetary benefits prior to the provision of any Retail Product or Service provided to its Clients.

*G.4.4.11 The arrangements and internal procedures referred to in R.4.4.49 should be followed when assessing the legitimacy of the payments and non-monetary benefits, and the basis for the decision/evaluation process should also be indicated.*

## Section 5: Oversight

R.4.5.50 The Regulated Person should identify all potential conflicts of interests arising from other activities of the Regulated Person itself or of other members in its group, and implement appropriate management procedures. In some cases, if the conflict of interest cannot be managed by procedures or arrangements, the only way to manage the conflict would be for the Regulated Person not to engage in the operation.

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## Annex I – Examples of Detrimental Cross-Selling Practices

The non-exhaustive examples below provide guidance on situations in which cross-selling practices may be deemed non-compliant with the obligations laid down in G.4.1.5.

### Examples with a monetary detriment

#### **Example 1**

Offering two products together – such as a credit agreement and a payment account – in a package where the price of the offer is higher than the price of each component separately offered by the same Regulated Person (as long as the products have the exact same features in both instances).

#### **Example 2**

Inducing a Client to buy a cross-selling offer by advertising/promoting the fact that, as of the day of sale, the overall amount of costs and charges payable by the Client is below the cumulated price of each component as sold separately, where in reality this amount of costs and charges are already scheduled to be raised to a higher amount overtime due, for instance, to the accumulation of running costs/fees.

### Example of purchase of unwanted or unnecessary products

#### **Example 3**

Offering a product bundled with another product – for example a credit agreement which is bundled together with a specific payment account – that has not been requested by the Client when the Regulated Person is aware or should be aware that the bundled product unnecessarily duplicates another product that the Client already has (for example where the Client already holds a payment account with the same Regulated Person) and cannot benefit from the additional product within the bundled package.



## Annex II – Examples of Instances leading to Conflicts of Interest detrimental to the Client

The non-exhaustive list of examples below provides guidance on situations within the context of banking relationships between Regulated Persons and their Clients on Retail Products that could lead to conflicts of interest being detrimental to the Client.

Some of these examples include instances of conflicts of interest which are already mitigated and managed by the Regulated Person's Conflict of Interest Policy rules and should therefore be read in conjunction with the contents of this Chapter. Other examples may not be directly governed by such policy rules but have been included in this appendix for illustrative purposes.

### Example 1

Where the Client is an employee, member of the management body, key official or director of the same Regulated Person and is therefore treated differently to other Clients due to any perceived conflict of interest.

### Example 2

Where the Client is treated differently due to the fact that he/she is a director or a key official of an entity whereby such other entity is:

- a. providing or being considered to potentially start providing a service to the Regulated Person;
- b. is a corporate client for other services offered by the Regulated Person;
- c. operates as an investment vehicle for the Regulated Person;
- d. operates in the same market of the Regulated Person, potentially in competition.

### Example 3

Where an employee of the Regulated Person is induced to sell more of a Retail Product over another type of Retail Product to a Client due to a higher commission or non-monetary reward gained even though the latter Retail Product would be more appropriate for the Client's needs.

### Example 4

Where the Regulated Person is offering Retail Products that are part of a Tying or Bundled practice together with other financial products e.g. an insurance product, that is being offered by a legal entity pertaining to the same group of companies of the Regulated Person. The Regulated Person might be induced to lead the Client into believing that this bundled package is suitable for his needs in order to maximise group revenue.

### Example 5

The Regulated Person may have a financial or other incentive to favour the interest of a particular Client or group of Clients over the interests of another Client.

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## Chapter 5 Bank-Client Relationship

### Introduction

Retail banking Clients should be treated honestly, fairly and professionally throughout all stages of their relationship with Regulated Persons, irrespective of the product/s which form the basis of such relationship. In providing services to clients, Regulated Persons should ensure that they act in their Clients' best interests. This Chapter highlights a number of key areas which promote Clients' protection from the initial stages of the Bank-Client relationship, including origination and issuance of the Retail Product up to the end of its lifetime. The Rules and Guidelines included in this Chapter should also be viewed alongside the ones under Chapter 1 which highlight a Regulated Person's disclosure requirements with respect to its Clients, particularly when key changes to a Retail Product or Service, or a significant change to any applicable contractual provisions, are expected to come into force.

Amongst others, this Chapter identifies a number of Rules and Guidelines which apply in determining whether a desired Retail Product is relevant to a Client or otherwise. Practices such as thorough creditworthiness assessments are vital in ensuring a Client's protection against over indebtedness and bankruptcy, thereby creating the necessary conditions for responsible lending. Notwithstanding, a common message that is conveyed throughout the Chapter is that the best interest of the Client should be the focal point along the whole customer journey in the context of the Bank-Client relationship as applicable for all Retail Products.

Moreover, the Chapter also makes specific reference to a Regulated Person's expected conduct when Clients encounter payment difficulties or other challenges in fulfilling their obligations towards the Regulated Person, including the inability to make timely repayments on a Credit Agreement as well as conduct which may lead to dormancy or closure of a Payment Account. The Regulated Person's chosen course of action should always be a measured one which caters for the individual Client's circumstances and one which affords ample time for the Client to rectify the situation.

## Applicability

The following provisions are in accordance with the scope and applicability laid down in [Consumer Credit Regulations](#) (S.L. 378.12).<sup>8</sup>

With respect to Rules and relevant Guidance which apply to Consumer Credit Agreements, any such agreement qualifying as an **Overdraft Facility where the credit has to be paid on demand or within three months**, shall not be subject to the following rules and guidelines: R.5.9.212 to R.5.9.222, R.5.10.228 and R.5.10.234.

With respect to Rules and relevant Guidance which apply to Consumer Credit Agreements, any such agreement qualifying as an **Overrunning**, shall not be subject to the following rules and guidelines: R.5.5.67 to R.5.5.115 and R.5.9.212 to R.5.10.234.

With respect to Rules and relevant Guidance which apply to Consumer Credit Agreements, any such agreement qualifying as an **open-ended Credit Agreements entered into before 1<sup>st</sup> October 2010**, shall not be subject to the following rules and guidelines: R.5.5.67 to R.5.5.115, R.5.9.217 to R.5.9.222 and R.5.10.228 to R.5.10.234.

With respect to Rules and relevant Guidance which apply to Consumer Credit Agreements, any such agreement qualifying as **Credit Agreements which provide for arrangements to be agreed by the Regulated Person and the Client in respect of deferred payments or repayment methods, where the Client is already in default on the initial Credit Agreement and where:**

- a. such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and
- b. the Client would not thereby be subject to terms less favourable than those laid down in the initial Credit Agreement,

shall not be subject to the following rules and guidelines: R.5.5.67 to R.5.5.115 and R.5.9.217 to R.5.10.224.

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<sup>8</sup> As stated in the Consultation Document, the MFSA supervision and powers will be expressly formalised through the issue (in due course) of relevant Maltese Subsidiary Legislation, as deemed necessary for the MFSA to assume the relevant supervisory remit. Therefore, for the purposes of Credit Institutions, this reference will (be substituted with a reference to Maltese subsidiary legislation to be issued under the Banking Act (Chapter 371 of the Laws of Malta).

## Section 1: General Rules

### 1.1 General Requirements

- R.5.1.1 When providing Retail Products and Services to Clients, a Regulated Person shall:
- a. act honestly, fairly and professionally in accordance with the best interests of its Clients;
  - b. at all times carry out the regulated activities with utmost good faith, integrity, due skill, care and diligence;
  - c. do everything which is reasonably possible to satisfy the needs and requirements of its Clients and shall place the interests of those Clients before all other considerations. Subject to these requirements and interests, a Regulated Person shall have proper regard for others.

- R.5.1.2 Pursuant to R.5.1.1, Regulated Persons can offer Retail Products and Services to Clients through a number of different channels, including but not limited to Retail Products and Services:
- a. offered at physical branches;
  - b. disseminated through ATMs at different locations;
  - c. offered over the internet through the use of a website;
  - d. provided through internet banking and/or mobile banking;
  - e. provided through telephone banking.

Irrespective of which any of these channels is used through which the Regulated Person delivers the Retail Product or Service, the said Regulated Person must ensure that the service it delivers is provided consistently, efficiently and in a manner that Client's best interest is safeguarded irrespective of which channel is used to establish and exercise the Banking-Client relationship.

- R.5.1.3 A Regulated Person shall draw up a customer charter, in line with Annex I to this Chapter, which shall be aimed at providing:
- a. In the case of opening of Payment Accounts:
    - i. guidance on the process which is to be undertaken for the purpose of opening a Payment Account with the Regulated Person, including applicable timelines;

- ii. a list of documentation and data which is expected from the Client in support of its application for the opening of a Payment Account;
  - iii. any fees applicable in connection with the opening, operation, maintenance and closing of a Payment Account;
  - iv. information on whether the Regulated Person offers the possibility of an internal appeal or review mechanism of any refusal or deemed refusal, and to the extent that it does offer for the possibility of such appeal or review, the way such internal review or appeal process may be undertaken, together with any relevant timings; and
  - v. information on the remedy available in certain instances to have a refusal by the Regulated Person reviewed by any third party in terms of Maltese Law.
- b. In the case of issuing credit facilities:
- i. guidance on the process which is to be undertaken in connection with the credit application process by an applicant with the Regulated Person, including applicable timelines;
  - ii. a list of documentation and data which is expected from the Client in support of its credit application;
  - iii. to the extent applicable, the Regulated Person's requirements regarding security and/or collateral required in connection with a credit facility;
  - iv. information on whether the Regulated Person offers the possibility of an internal appeal or review of any refusal or deemed refusal, and to the extent that it does offer for the possibility of such appeal or review, the way such internal review or appeal process may be undertaken, together with any relevant timings; and
  - v. information on the remedy available in certain instances to have a refusal by a financial services provider reviewed by a third party in terms of Maltese Law.

R.5.1.4 The information set out in the customer charter referred to in R.5.1.3 shall be made available online on the Regulated Person's website and, if so requested by the Client, on a durable medium free of charge. It shall be the duty of the Regulated Person to keep such information updated at all times.

R.5.1.5 Regulated Persons shall:

- a. review their business model and strategy on a regular basis so as to ensure that the conduct of their business and the manner in which they treat their Clients place them at the centre of their operations;
- b. identify conduct risks and set up processes to ensure that such risks are measured, mitigated and monitored;
- c. ensure that conduct risks are known to key personnel within the Regulated Person, including members of the Management Body. Members of the Management Body may be required to address any concern/s the MFSA may have with respect to the Regulated Person's operation;
- d. ensure that there are clear levels of responsibilities, clear establishment of target markets, appropriate distribution channels, and clear communication with Clients;
- e. monitor the performance management, employee development and reward programmes incentivising staff members to ensure that the way a Regulated Person remunerates or assesses performance of its staff does not conflict with its duty to act in the best interests of its Clients.

R.5.1.6 The Management Body of the Regulated Person shall ensure that in all the decisions it takes with respect to the operation of the Regulated Person, it gives paramount importance to the conduct of its business vis-a-vis the Clients of the Regulated Person.

R.5.1.7 In order to comply with the requirements of R.5.1.1, a Regulated Person shall, *inter alia*:

- a. seek from its Clients information relevant to the Retail Product or Service requested;
- b. in the completion of any document, make it clear that all the answers or statements regarding the Client's personal details and circumstances are the Client's own responsibility. The Client should always be required to assume responsibility for the completed document and be advised that, incomplete and/or inaccurate information may prejudice the Client's rights or the provision of the requested products;
- c. not withhold from the Client any written evidence or documentation relating to the Retail Product or Service without adequate and justifiable reasons being disclosed in writing and without delay to the Client;
- d. not recklessly, negligently or deliberately mislead Clients to the real or perceived advantages or disadvantages of any Retail Product or Service;
- e. ensure that all instructions from or on behalf of a Client are processed properly and promptly;



- f. have proper regard for the wishes of a Client who seeks to terminate any agreement with it to carry out business;
- g. seek to avoid conflicts of interest;
- h. not exert undue pressure or undue influence on a Client;
- i. give advice only on those Retail Products or Services in which the Regulated Person is knowledgeable;
- j. treat all information supplied by the Client with complete confidentiality; and
- k. not request Clients to sign declarations to the effect that s/he has understood and accepts certain features of the Product or that s/he is relying on his/her own skill, judgement and expertise in order to purchase Retail Products.

R.5.1.8 Regulated Persons shall have adequate policies and procedures to ensure that Retail Products and Services offered are fair and transparent. Such policies and procedures should ensure a consistent and consumer-centric approach and an efficient service, whilst ensuring the best interest of the Clients throughout the customer journey, notwithstanding the channels used in providing the Retail Product or Service.

R.5.1.9 As part of providing an efficient service level to Clients, Regulated Persons shall inform their Clients immediately upon information of potential scams and/or cyber threats, together with information that a Client should know to avoid entering into such transactions.

In this regard, Regulated Persons shall provide on their website and social media communication platforms adequate and updated information with respect to scams and the consequences of providing passwords or credentials to unauthorised persons.

R.5.1.10 When a Client is impacted by a scam and notifies the Regulated Person of such a situation, the Regulated Person shall act immediately and assist the Client in recovering any amounts lost where this is possible.

R.5.1.11 Regulated Persons should educate Clients on the usage of digitalised services they offer, whereas Clients should still be offered the possibility to set up meetings with dedicated staff who can provide demonstrations to assist them in the usage of such digitalised services.

R.5.1.12 In cases where erroneous transactions have taken place from the Regulated Person's side, the Regulated Person shall reverse such erroneous transaction/s immediately at no additional cost to the impacted Client.

Subsequently and within a reasonable period of time, the Regulated Person should inform the impacted Client about such erroneous transaction and its effective reversal, together with an explanation as to why it might have occurred and how has it been resolved. If reversing the transaction cannot be made effective immediately, the Regulated Person should explain this fact to the impacted Client and provide a reasonable timeline of when the matter will be resolved.

- R.5.1.13 Any information acquired by a Regulated Person from a Client shall not be used or disclosed except in the normal course of negotiating, maintaining or renewing a Retail Product or Service for that Client or in accordance with the provisions of specific legislation or unless the consent of the Client has been obtained.
- R.5.1.14 Where a Regulated Person deals with a person who is acting for a Client under a power of attorney, the Regulated Person shall:
- a. obtain a certified copy of the power of attorney;
  - b. ensure that the power of attorney allows the person to act on the Client's behalf;
  - c. operate within the limitations set out in the power of attorney; and
  - d. obtain contact details of the person having the power of attorney.
- R.5.1.15 When providing Retail Products or Services from a place of business or from any other place accessible to the public, the Regulated Person shall display the licensing, authorisation certificate or an official copy thereof issued by the MFSA, in a prominent position in that place and in a part thereof to which the public has access.
- R.5.1.16 Where the Regulated Person offers Retail Products and Services through the use of an ATM and/or Deposit Machine, it shall ensure that these are as much as possible available for public usage 24/7 and allow for adequate and ongoing maintenance on such machines.
- R.5.1.17 Pursuant to R.5.16, when a downtime service is planned on a mobile banking application or internet banking or ATMs or when services at particular branches will be limited or unavailable, Clients need to be informed beforehand or if unplanned, on the same day of occurrence, through social media and any other communication medium considered to be the most suitable for the general type of Client base of the Regulated Person.
- R.5.1.18 A Regulated Person shall not:

- a. make inaccurate or unfair criticism of any other Regulated Person or any Retail Product offered by such other Regulated Persons;
- b. make comparisons with other types of Retail Products or Services unless the differing characteristics of each Retail Product or Service are made clear.

R.5.1.19 Regulated Person shall not:

- a. persuade or attempt to persuade a Client to surrender or cancel any Retail Product or Service which such Client may have already purchased, if such surrender or cancellation is not in the best interest of the Client;
- b. in general, entice Clients to purchase Retail Products or Services it offers by giving or promising to give gifts to such Clients. Any gifts which the Regulated Person may offer to its Clients must be related to the Product or Service being offered and/or enhance the value thereof. Such gifts should not be of a substantial value.

*G.5.1.1 Any gifts offered by Regulated Persons to their Clients should:*

- a. not be of a high value (e.g. cruises, holidays, jewellery, electronic gadgets);*
- b. not be given at the stage where the client merely makes an appointment with the Regulated Person with a view to discuss a Product or Service offered by the latter;*
- c. be related to the nature of the service being provided or enhance the nature of the Product or Service (for example roadside membership assistance with motor insurance would be acceptable).*

R.5.1.20 Regulated Person shall explain to the Client 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 Client understands better.

R.5.1.21 Regulated Persons must ensure that their staff members providing services to Clients are able to provide adequate explanations of the terms and conditions related to the Retail Product being offered, including explanation of the consequences of breaches by the Client.

R.5.1.22 Regulated Persons should also have arrangements in place for Clients to submit their queries. Such arrangements should allow for adequate response times taking into consideration the urgency of matters. This, without prejudice to the provisions relating to Complaints Handling under Section 13 titled 'Complaints Handling Mechanisms'.

## 1.2 Record Keeping Requirements

- R.5.1.23 Whatever the medium used to carry out transactions with Clients, counterparties and other third parties, Regulated Persons shall:
- have real time access to and control over all transactional data;
  - preserve its records on an ongoing basis at its head office for at least the period stipulated by law;
  - have in place an appropriate offsite backup system for risk management and business continuity purposes; and
  - provide such access to the MFSA as and when it requires, including during onsite inspections.
- R.5.1.24 In respect of Credit Agreements relating to Residential Immovable Property, a Regulated Person shall keep appropriate records concerning the types of immovable property accepted by the Regulated Person as security, as well as the related underwriting policies used in relation to Credit Agreements.

## Section 2: Visits, Calls and Other Communications

### 2.1 General Requirements

- R.5.2.25 Regulated Persons shall as much as possible avoid making unsolicited or unarranged calls to Clients unless otherwise requested by a Client. When such calls are made the Regulated Person shall always identify itself, making known its regulated status, its name and any other relevant particulars.
- R.5.2.26 The Regulated Person shall ensure that Staff who deal with Clients only engage in unsolicited calls (“cold calls”) on condition that they:
- are civil and considerate;
  - do not use undue pressure, deception or artificiality;
  - make plain their purpose;
  - avoid contacts during unsocial hours, and pay due regard to the reasonable request of Clients (for example, Clients who work in a shift pattern) in respect of when, where and how they may be contacted;

- e. observe the Conduct of Business Rules in this section and ensure that no deals are finalised on the sole basis of a telephone conversation unless previously agreed otherwise in writing with the Client; and
- f. do not promote any complex Retail Products (e.g. structured deposits) by means of cold calling.

R.5.2.27 Pursuant to R.5.2.26, the Regulated Person must ensure that a member of its Staff contacting a Client on its behalf explains to the Client the following matters:

- a. who the individual contacting the Client works for;
- b. the individual's role in or relationship with the Regulated Person; and
- c. the purpose of the contact.

R.5.2.28 A Regulated Person must not, in a communication with the Client, make a statement which may induce the Client to contact the Regulated Person without understanding the proper reason for making contact.

For example, a misleading communication is a contact card left at the Client's address which states or implies that the Client has missed a delivery and encourages the Client to make contact.

R.5.2.29 The Regulated Person must not require a Client to make contact on a premium rate or other special rate telephone number, the charge for which is higher than to a standard geographic telephone number

R.5.2.30 The Regulated Person shall ensure that Staff engaged in the sale of Retail Products do not harass or cajole Clients or force them to purchase a Retail Product or Service. The Regulated Person's Staff shall not continue with the sales dialogue if requested by the Client to desist and/or indicates no interest in the product.

R.5.2.31 The Regulated Person shall not provide Retail Products and Services in the home of the Client without having obtained the client's explicit consent therefor. The Regulated Person must obtain informed consent separately for each personal visit and shall keep record of such consent accordingly.

A Regulated Person must have obtained the informed consent of a Client who is an individual in relation to:

- a. the purpose(s) for which a personal visit is to be made, including in the case of sales and marketing, the types of Retail Product to be discussed during the personal visit; and
- b. the time and date for the personal visit.

R.5.2.32 Where the Regulated Person provides more than one Retail Product or Service, it shall not make use of Client information held by it or any other entity within its group, with respect to the provision of a particular Regulated Activity, for the purposes of marketing another Regulated Activity to such Clients unless it obtains the explicit consent of the Client in question.

The Regulated Person shall accompany the request for such consent with a warning that the nature and risks of the Retail Products and Services which are going to be offered to the Client differ from those of the Retail Products and Services which have been offered to the Client to date. The Regulated Person should also warn Clients that they should seek to ensure that they clearly understand all the relevant risks before purchasing any new Retail Products and/or Services.

R.5.2.33 A Regulated Person may make telephone contact with a Client who is an existing Client, only if:

- a. the Regulated Person has provided that Client with a Retail Product or Service similar to the purpose of the telephone contact; or
- b. the Client holds a Retail Product, which requires the Regulated Person to maintain contact with the Client in relation to that Retail Product; and
- c. the Client has given his or her consent to being contacted in this way by the Regulated Person. For the purposes of this requirement, the Regulated Person may proceed by requesting the Client to give his or her verbal consent at the beginning of the telephone conversation. The Regulated Person must retain a record of the Client's verbal consent.

R.5.2.34 A Regulated Person shall ensure that, where it makes a telephone contact on the basis of a referral, it retains a record of the referral.

R.5.2.35 When making a personal visit or telephone contact in accordance with this Rulebook, the representative of a Regulated Person shall immediately and in the following order:

- a. identify himself or herself by name, and the name of the Regulated Person on whose behalf he or she is being contacted and the commercial purpose of the contact;
- b. inform the Client that the meeting is being recorded, if this is the case;
- c. where relevant, disclose to the Client, the source of the business lead or referral supporting the telephone contact;

- d. explain the purpose(s) for which a personal visit is to be/being made, including the types of Retail Products and Services to be discussed during the personal visit (where applicable);
- e. establish if the Client's wishes the personal visit or telephone contact to proceed and, if not, end the contact immediately.

R.5.2.36 Under normal circumstances, telephone contact may be made only between 9.00 a.m. and 6.00 p.m. Monday to Friday and 9.00 a.m. till 1.00 p.m. on Saturdays (excluding bank holidays and public holidays), unless otherwise agreed with the Client. This should not apply if contact needs to be made in response to previous contact of the Client with customer care staff outside office hours or the hours stipulated in this rule.

R.5.2.37 A Regulated Person shall abide by a request from a Client not to make a personal visit or telephone contact to him or her again and this request shall be recorded by the Regulated Person.

R.5.2.38 In addition to any record keeping requirements resulting from this Rulebook the Regulated Persons shall record in a Durable Medium all relevant information related to relevant face-to face conversations with Clients. The information recorded is at the discretion of the Regulated Person but shall include at least the following:

- a. date of meeting;
- b. location of meeting;
- c. identity of the attendees;
- d. initiator of the meeting;
- e. the reason as to why the meeting was held; and
- f. other relevant information.

*G.5.2.2 For the purposes of R.5.2.38, an email communication which satisfies the above requirements with respect to content, would be considered sufficient.*

## 2.2 Debt Collection Visits and/or Communications

R.5.2.39 A Regulated Person must not unfairly disclose or threaten to disclose information relating to the Client's debt to a third party.

R.5.2.40 When contacting a Client:

- a. a Regulated Person must ensure that it does not act in a way likely to be publicly embarrassing to the Client; and



- b. a Regulated Person must take reasonable steps to ensure that third parties do not become aware that the Client is being pursued in respect of a debt.

*G.5.2.3 Reasonable steps required by R.5.2.40 may for example, require a Regulated Person to ensure that post sent by the Regulated Person is properly addressed to the Client and marked "private and confidential" or an expression to the same effect.*

R.5.2.41 A Regulated Person must ensure that all individuals visiting a Client's property on its behalf shall at all times act in accordance with the requirements of the provisions of this Chapter wherever applicable and do not:

- a. act in a threatening manner towards the Client;
- b. visit a Client at a time when the individual knows or suspects that the Client is, or may be, particularly vulnerable;
- c. visit at an inappropriate location (e.g. the Client's place of work or a hospital where the Client is a patient), unless the Client has expressly consented to the visit;
- d. enter a Client's property without the Client's consent or an appropriate court order;
- e. refuse to leave a Client's property when it becomes apparent that the Client is unduly distressed or might not have the mental capacity to make an informed repayment decision or to engage in the debt recovery process;
- f. refuse to leave a Client's property when reasonably asked to do so.

R.5.2.42 When contacting Clients, a Regulated Person must not misrepresent its authority or its legal position with regards to the debt or debt recovery process.

R.5.2.43 A Regulated Person must not suggest or state that action can or will be taken when legally it cannot be taken.

For example in instances whereby the Regulated Person or an individual acting on behalf of the Regulated Person:

- a. states or implies that bankruptcy or sequestration proceedings may be initiated when the balance of the outstanding debt is too low to qualify for such proceedings;
- b. claims a right of entry will be exercised when no court order to this effect has been granted; or
- c. states that goods will be repossessed when no specific authorisation to repossess the goods has been granted by a court.

- R.5.2.44 A Regulated Person must not suggest or state that an action has been taken when no such action has been taken.

## Section 3: Knowledge and Competence of Staff

- R.5.3.45 Regulated Persons should have sufficient resources and Staff allocated to credit risk taking and, in particular, credit decision-making, credit risk management and internal control. The organisational structure should be reviewed periodically to ensure that there are adequate resources, competencies and expertise within the credit risk management functions to effectively manage credit risk.

- R.5.3.46 Regulated Persons should ensure that the Staff members involved in credit granting, in particular decision-making, risk management and internal control, have an appropriate level of experience, skills and credit-related competence.

In addition, in the case of Staff members being involved in the granting of Credit Agreements relating to Residential Immovable Property, the said Staff members should be subject to the experience requirements as mentioned in the [Credit Intermediaries Rule](#).

- R.5.3.47 Regulated Persons shall ensure that staff providing relevant Retail Products possess the necessary knowledge and competence to meet relevant regulatory and legal requirements and business ethics standards.

- R.5.3.48 Regulated Persons shall ensure that staff know, understand and apply the Regulated Person's internal policies and procedures designed to ensure compliance with its obligations. In order to ensure a proportionate application of knowledge and competence requirements, Regulated Persons shall ensure that staff have the necessary levels of knowledge and competence to fulfil their obligations, reflecting the scope and degree of the relevant Retail Products provided.

- G.5.3.4 The Regulated Person's staff who is directly involved in offering Retail Products to Clients, should have the skills necessary to be able to assess the needs and circumstances of the Client. They are also recommended to have sufficient expertise to understand the Retail Products to be recommended and to determine whether the features of the Retail Product match the needs and circumstances of the Client.*

- R.5.3.49 The Regulated Person shall ensure that staff giving information about Retail Products or ancillary services that are available through the Regulated Person have the necessary knowledge and competence to understand and explain to Clients the Retail Product's key characteristics, risk and features, including in particular, the knowledge and understanding of the consequences of any breaches to the terms and conditions. Particular care should be taken when giving information with respect to Retail Products characterised by higher levels of complexity, particularly Retail Products related to Credit Agreements. They should also be in a position to understand and explain to Clients the total amount of costs and charges to be incurred by the Client throughout the lifetime of the Retail Product and be able to communicate this effectively to the Client.
- R.5.3.50 Staff involved in credit granting, including credit decision-making, credit risk management and internal control, should frequently receive appropriate training, which includes considering changes to the applicable legal and regulatory frameworks. Training should be aligned with the Regulated Persons' credit culture and business strategy and should be conducted on a regular basis to ensure that all relevant Staff are appropriately skilled and familiar with the Regulated Persons' credit policies, procedures and processes.
- R.5.3.51 In relation to Credit Agreements relating to Residential Immovable Property, the minimum knowledge and competence requirements of creditors' and credit intermediaries' staff involved in credit granting, shall be subject to MCD Regulations<sup>9</sup> and the related [Credit Intermediaries Rule](#).

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<sup>9</sup> This Rule is referring to the wording found in regulation 6 of the current Credit Agreements relating to Residential Immovable Property Regulations (S.L.378.10).

As stated in the Consultation Document, the MFSA supervision and powers will be expressly formalised through the issue (in due course) of relevant Maltese Subsidiary Legislation, as deemed necessary for the MFSA to assume the relevant supervisory remit. Therefore, for the purposes of Credit Institutions, this reference will (be substituted with a reference to Maltese subsidiary legislation to be issued under the Banking Act (Chapter 371 of the Laws of Malta).

## Section 4: Access and Eligibility to Open and Hold Payment Accounts

### 4.1 Applicability

R.5.4.52 The Rules under this section shall only apply to Payment Accounts as defined in the glossary.

### 4.2 General Requirements

R.5.4.53 Regulated Persons shall not discriminate against Clients who are legally resident in Malta or in another Member State by reason of their nationality or place of residence or by reason of any other ground referred to in Article 21 of the [Charter of Fundamental Rights of the European Union](#), the [Equality for Men and Women Act \(Cap 456\)](#) and in other provisions contained in any other Maltese Law as may be in force and amended from time to time, when those Clients apply for, or access, a Payment Account. Moreover, the conditions applicable to holding a Payment Account with Basic Features shall be in no way discriminatory.

R.5.4.54 Clients who are legally resident in Malta or in another European Member State shall be eligible to open and use a Payment Account with basic features. Such a right shall apply irrespective of the Client's place of residence.

R.5.4.55 Clients legally resident in Malta or in another European Member State shall include:

- a. Clients with no fixed address;
- b. Persons who may be granted any status as promulgated under the [International Protection Act \(Cap. 420\)](#) or any other national legislation, where such persons may include refugees, beneficiaries of subsidiary protection and, or beneficiaries of other forms of humanitarian or international protection, stateless persons, asylum seekers and failed or rejected asylum seekers;
- c. Clients who have not been granted a residence permit but whose expulsion is impossible for legal or factual reasons; and
- d. Clients whose status is not covered under indents (a) to (c) but whose expulsion is impossible for legal or factual reasons.

- R.5.4.56 Regulated Persons may require Clients who wish to open a Payment Account with basic features, to show a genuine interest in doing so.
- R.5.4.57 Regulated Persons that offer Payment Accounts with basic features may refuse an application for such an account where a Client already holds a Payment Account with another Regulated Person and where that account meets the features of a Payment Account with basic features, save where the Client declares that he has received notice that the Payment Account will be closed.
- R.5.4.58 Regulated Persons shall not refuse to open a Payment Account with basic features on the basis of the Client's financial circumstances, including their employment status, level of income, credit history or personal bankruptcy.
- R.5.4.59 Before opening a Payment Account with basic features, a Regulated Person may therefore verify whether the Client holds or does not hold a Payment Account with basic features with another Regulated Person. Alternatively, the Regulated Person may otherwise choose to rely on and accept a declaration of honour signed by the Client for that purpose.
- R.5.4.60 Notwithstanding the provisions of the [Professional Secrecy Act \(Chapter 9\)](#), Article 34 of the [Banking Act \(Chapter 371\)](#) and any other relevant provisions contained in any other Maltese Law, Regulated Persons in Malta may, subject to the express written consent of the Client to this effect, exchange information with other Regulated Persons which is reasonably required for the purpose of verifying the information provided in terms of R.5.4.59.
- R.5.4.61 Regulated Person shall not introduce or implement any policies or procedures which may, directly or indirectly, impose any unnecessary, difficult, or burdensome restrictions or processes to dissuade Clients from exercising any such rights they are entitled to under this sub-section.
- R.5.4.62 Regulated Persons with a branch network having five or more branches shall offer a Payment Account with basic features and may also offer online accounts with the same basic features. Access to such Payment Account with basic features shall be provided through the entire branch network of the Regulated Person concerned.

Regulated Persons with a network of four branches or less may also offer a Payment Account with basic features provided that in such cases, the following rules shall apply to such Regulated Persons *mutatis*

*mutandis*: R.1.4.177 to R.1.4.178, R.1.4.180 to R.1.4.182, R.5.4.53 to R.5.4.66 and R.5.7.171 to R.5.7.185.

- R.5.4.63 Where an application for a Payment Account with basic features is made by a Client to a Regulated Person, the Regulated Person shall open or refuse to open the account without undue delay, and no later than ten business days from recorded receipt of the completed application.
- R.5.4.64 A Regulated Person shall refuse to open a Payment Account with basic features for a Client where to do so would result in a breach of any anti-money laundering and combating the funding of terrorism obligations arising from applicable law or from any other enforceable procedure, guidance or provision.
- R.5.4.65 Regulated Persons shall consider whether there are any grounds for the circumstances surrounding a refusal to open a Payment Account with basic features as set out in R.5.4.64 to be disclosed to the Financial Intelligence Analysis Unit as established in terms of the [Prevention of Money Laundering Act \(Chapter 373\)](#).
- R.5.4.66 A Regulated Person shall ensure that access to and operation of a Payment Account with basic features is not made conditional on the purchase of any additional services or of shares in the Regulated Person, unless the latter is conditional for all Clients of the Regulated Person.

## Section 5: Creditworthiness Assessments

### Part A: General Rules applicable to all Credit Agreements

#### 5.A.1 General Creditworthiness Provisions for lending to Clients

- R.5.5.67 Regulated Persons should, in line with the relevant consumer protection legislation, assess the Client's ability and prospect to meet the obligations under the Credit Agreement, covering, in particular, an assessment of the Client's source of repayment capacity, taking into account specificities of the Credit Agreement, such as nature, maturity and interest rate.

- G.5.5.5 The purpose of each creditworthiness assessment is twofold, with Regulated Persons bound to consider:*
- a. The risk that the Client will not make repayments under the Credit Agreement by their due dates (credit risk); and*
  - b. The risk to the Client of not being able to make repayments in accordance with the Credit Agreement (affordability risk).*

R.5.5.68 Collateral, in the case of secured lending, by itself should not be a predominant criterion for approving a loan and cannot by itself justify the approval of any Credit Agreement. Collateral should be considered the Regulated Person's fallback mechanism in case of default or material deterioration of the risk profile, and not the primary source of repayment, with the exception of when the Credit Agreement envisages that the repayment of the Credit Agreement is based on the sale of the property pledged as collateral or liquid collateral provided.

R.5.5.69 When assessing the Client's ability to meet obligations under the Credit Agreement, Regulated Persons should take into account relevant factors that could influence the present and future repayment capacity of the Client, whilst also avoiding the inducement of undue hardship and over-indebtedness. The factors should include other servicing obligations; their remaining duration; their interest rates and the outstanding amounts; repayment behaviour, e.g. evidence of any missed payments and their circumstances; directly relevant taxes and insurance if known; as well as an analysis of the Client's debts compared to their income.

R.5.5.70 Where the Regulated Person can reasonably foresee that there is likely to be a reduction in the Client's future income during the term of the Credit Agreement which could have a material impact on affordability risk, the Regulated Person must take reasonable steps to estimate the amount of that reduction.

Conversely, the Regulated Person can only take into account an expected future increase in the Client's income where it reasonably believes, on the basis of proportionate evidence, that the increase is likely to happen during the term of the Credit Agreement.

R.5.5.71 If the Client intends to make repayments (wholly or partially) using savings or other assets, the Regulated Person must take into account:

- a. the purpose for which the savings or assets are or will be held;
- b. the likelihood of the savings or assets being available to make repayments under the Credit Agreement; and



c. any significant adverse impact on the Client's financial situation by using those savings or assets.

R.5.5.72 The Regulated Person should also consider the Client's ability to meet obligations under the Credit Agreement and make reasonable allowances for committed and other non-discretionary expenditures, such as the Client's actual obligations, including appropriate substantiation and consideration of the living expenses of the Client.

The Regulated Person shall set up acceptable Net Disposable Income thresholds for each type of Client. The acceptable Net Disposable Income for each type of Client shall be set in accordance with the specific circumstances of the Client.

R.5.5.73 Where it is reasonably foreseeable that there is likely to be an increase in the Client's non-discretionary expenditure, during the term of the Credit Agreement which could have a material impact on affordability risk, the Regulated Person must take reasonable steps to estimate the amount of that increase.

Conversely, the Regulated Person may only take into account an expected future decrease in non-discretionary expenditure where the Regulated Person reasonably believes, on the basis of appropriate evidence, that such decrease is likely to happen during the term of the Credit Agreement.

*G.5.5.6 Non-discretionary expenditure shall include payments needed to meet priority debts and other essential living expenses and other expenditures which are unreasonable to reduce whilst maintaining a basic quality of life. It also includes payments the Client has a contractual or statutory obligation to make.*

R.5.5.74 If the Credit Agreement application is submitted jointly by more than one Client, Regulated Persons should perform the creditworthiness assessment on the basis of the joint repayment capacity of all Clients.

R.5.5.75 For assessing the Client's ability to meet obligations under the Credit Agreement, Regulated Persons should adopt suitable methods and approaches, which may include models, as long as the Rules and Guidelines in this Rulebook are met. The selection of the suitable and adequate method should depend on the risk level, size and type of Credit Agreement.

- R.5.5.76 If a Credit Agreement involves any form of guarantees from third parties, Regulated Persons should assess the level of protection provided by the guarantee, and if relevant, conduct a creditworthiness assessment of the guarantor, applying the relevant provisions of the Rules and Guidelines in this Rulebook, depending on whether the guarantor is a natural person or an enterprise.

## 5.A.2 Credit Risk Policies and Procedures

### 5.A.2.1 General Requirements

- R.5.5.77 Regulated Persons should have in place credit risk policies and procedures which specify:
- a. policies and procedures and rules for the approval of credit granting and decision-making, including appropriate authorisation levels set in accordance with the credit risk appetite and limits;
  - b. credit-granting criteria, taking into account the items referred to in Annex II to this Chapter;
  - c. requirements for the handling of information and data needed for the creditworthiness assessment;
  - d. requirements for the creditworthiness assessment, including a sensitivity analysis;
  - e. conditions for the application of automated decision-making in the credit-granting process, including identifying products, segments and limits for which automated decision-making is allowed;
  - f. a risk-based approach, addressing possible deviations from standard credit policies and procedures and credit-granting criteria, including:
    - i. conditions defining the approval process for deviations and exceptions and the specific documentation requirements, including the audit trail;
    - ii. criteria for rejections and criteria for the escalation of deviations/exceptions to higher levels of the decision-making authority (including overrides, overrules, exposures possibly approved as an exception to general lending standards and other non-standard business under a special process with different approval authorities);
    - iii. requirements for the monitoring of circumstances and conditions for an exceptional credit-granting decision, including requirements for their review by the relevant functions during the

- regular review of the application and compliance with policies and limits;
- g. requirements relating to what is to be documented and recorded as part of the credit-granting process, including for sampling and audit purposes – this should include, at a minimum, the requirements for the completion of credit applications, the qualitative and quantitative rationale/analysis, and all supportive documentation that served as a basis for approving or declining the credit facility;
  - h. where applicable, the criteria as set out in R.5.5.84 and R.5.5.85.
- R.5.5.78 Within their credit risk policies and procedures and building on the credit risk strategy, Regulated Persons should also take into account principles of responsible lending. In particular:
- a. they should consider the specific situation of a Client, such as the fair treatment of Clients that are in economic difficulties;
  - b. they should design credit products that are offered to Clients in a responsible way.
- R.5.5.79 For the credit products that are offered to Clients, Regulated Persons should ensure that the credit-granting criteria are not inducing undue hardship and over-indebtedness for the Clients and their households.
- R.5.5.80 In their credit risk policies and procedures dealing with credit decision-making as referred to in R.5.5.77(a) and creditworthiness assessments as referred to in paragraph R.5.5.77(d), Regulated Persons should also specify the use of any automated models in the creditworthiness assessment and credit decision-making processes in a way that is appropriate to the size, nature and complexity of the credit facility and the types of Clients. In particular, Regulated Persons should set out appropriate governance arrangements for the design and use of such models and the management of the associated model risk, taking into account the criteria set out in R.5.5.82 and R.5.5.83.

### *5.A.2.2 Technology-enabled Innovation for Credit granting*

- R.5.5.81 When using technology-enabled innovation for credit-granting purposes, Regulated Persons should do the following:
- a. Ensure that the Management Body has a sufficient understanding of the use of technology-enabled innovation, its limitation and the impact it has on credit-granting procedures.

- b. Understand the underlying models used, including their capabilities, assumptions and limitations, along with ensuring their traceability, auditability and robustness and resilience.
- c. Understand the quality of data and inputs to the model and detect and prevent bias in the credit decision-making process, ensuring that appropriate safeguards are in place to provide confidentiality, integrity and availability of information and systems.
- d. Ensure the performance of the model, including the validity and quality of its outputs, is continuously monitored and appropriate remediation measures are taken in a timely manner in the case of detected issues (e.g. worsening or deviating from expected behaviour).

### *5.A.2.3 Models for Creditworthiness Assessment and Credit Decision-making*

- R.5.5.82 When using automated models for creditworthiness assessment and credit decision-making, Regulated Persons should understand the models used, and their methodology, input data, assumptions, limitations and outputs, and should have in place:
- a. internal policies and procedures detecting and preventing bias and ensuring the quality of the input data;
  - b. measures to ensure the traceability, auditability, and robustness and resilience of the inputs and outputs;
  - c. internal policies and procedures ensuring that the quality of the model output is regularly assessed, using measures appropriate to the model's use, including back-testing the performance of the model;
  - d. control mechanisms, model overrides and escalation procedures within the regular credit decision-making framework, including qualitative approaches, qualitative risk assessment tools (including expert judgement and critical analysis) and quantitative limits.
- R.5.5.83 Regulated Persons should have adequate model documentation that covers:
- a. methodology, assumptions and data inputs, and an approach to detecting and preventing bias and ensuring the quality of input data;
  - b. the use of model outputs in the decision-making process and the monitoring of these automated decisions on the overall quality of the portfolio or products in which these models are used.

### 5.A.2.4 Data Infrastructure

- R.5.5.84 Regulated Persons should have appropriate data infrastructure as well as relevant policies and procedures to support the credit-granting process and for the purposes of credit risk management and monitoring throughout the life cycle of the credit facilities (e.g. loan origination and creditworthiness assessment, risk assessment, credit review and monitoring). The data infrastructure should ensure the continuity, integrity and security of information on the exposure, borrower and collateral, from the point of origination and throughout the life cycle of the credit facility.
- R.5.5.85 The data infrastructure should be detailed and sufficiently granular to capture specific loan-by-loan information, in particular actual credit-granting criteria applied at the point of origination, allowing data regarding the Client to be linked with data regarding collateral, to support the effective monitoring of credit risk and enable effective audit trailing, operational and credit performance and efficiency measurement, as well as the tracking of policy deviations, exceptions and overrides (including credit/transaction rating or scoring overrides).

### 5.A.3 Credit Risk Management and Internal Control Frameworks

- R.5.5.86 For the purposes of R.4.1.7, Regulated Persons should consider the following areas/tasks:
- a. developing and maintaining credit-granting and monitoring processes and procedures;
  - b. performing an assessment of creditworthiness and a credit risk analysis for scoring or rating purposes; and
  - c. providing an independent/second opinion on the creditworthiness assessment and credit risk analysis for the purposes of credit decision-making, specifying in which circumstances, considering the specificities of the credit facility, its size and the risk profile of the Client, this independent/second opinion is relevant.

### 5.A.4 Information and Documentation for the purpose of the Creditworthiness Assessment

- R.5.5.87 Regulated Persons should have sufficient, accurate and up-to-date information and data necessary to assess the borrower's creditworthiness and risk profile before concluding a loan agreement.
- R.5.5.88 For the purposes of the creditworthiness assessment of individual Clients, Regulated Persons should have available and use information supported by necessary and appropriate evidence, in relation to at least the following:
- a. purpose of the loan, when relevant to the type of Credit Agreement;
  - b. employment;
  - c. source of repayment capacity;
  - d. composition of a household and dependents;
  - e. financial commitments and expenses for their servicing;
  - f. regular expenses;
  - g. collateral (for secured lending); and
  - h. other risk mitigants, such as guarantees, when available.
- R.5.5.89 For the purposes of the creditworthiness assessment of Clients pertaining to micro-enterprises, Regulated Persons should have available, and use information supported by necessary and appropriate evidence, in relation to at least the following:
- a. purpose of the loan, when relevant to the type of Retail Product;
  - b. income and cash flow;
  - c. financial position and commitments, including assets pledged and contingent liabilities;
  - d. business model and, when relevant, corporate structure;
  - e. business plans supported by financial projections;
  - f. collateral (for secured lending);
  - g. other risk mitigants, such as guarantees, when available;
  - h. product type-specific legal documentation (e.g. permits, contracts).
- R.5.5.90 In addition to R.5.5.88 and R.5.5.89, Regulated Persons may consider the use of specific information, data items and evidence, such as:
- a. evidence of identification;
  - b. evidence of residence;
  - c. where applicable, information on the purpose of the Credit Agreement;
  - d. where applicable, evidence of eligibility for the purposes of the Credit Agreement;
  - e. evidence of employment, including the type, sector, status (e.g. full-time, part-time, contractor, self-employed) and duration;
  - f. evidence of income or other sources of repayment (including annual bonus, commission, overtime, where applicable) covering a

- reasonable period, including payslips and current bank account statements;
- g. Information on financial assets and liabilities, e.g. savings account statements and loan statements indicating outstanding loan balances;
  - h. Information on other financial commitments, such as child maintenance, education fees and alimonies, if relevant;
  - i. Information on household composition and dependants;
  - j. Evidence of tax status,
  - k. Where applicable, evidence of life insurance for the named Clients;
  - l. Where applicable, data from credit registers or credit information bureaux or other relevant databases, covering the information on financial liabilities and arrears in payment;
  - m. Information on the collateral, if any;
  - n. Evidence of ownership of the collateral;
  - o. Evidence of the value of the collateral;
  - p. Evidence of insurance of the collateral;
  - q. Information on guarantees, other credit risk mitigating factors and guarantors, if any; and
  - r. Rental agreement or evidence of potential rental income for buy-to-let loans, if any.

- R.5.5.91 In order to determine whether it has sufficient information and data at its disposal, and in deciding what steps are needed to make the creditworthiness assessment a reasonable one, the Regulated Person should have regard to each of the following elements:
- a. The type of credit;
  - b. The amount of credit or credit limit;
  - c. The duration (or likely duration) of the credit;
  - d. The frequency of repayments;
  - e. The amounts of the repayments;
  - f. The total amount payable;
  - g. The total charge for credit;
  - h. The APRC;
  - i. Whether the interest rate or any other charge is fixed or variable;
  - j. Any other costs which will or may be payable by, or on behalf of the Client, in connection with the Credit Agreement; and
  - k. Any other potential adverse consequences for the Client arising under the Credit Agreement from a failure to make a repayment by the due date.

- R.5.5.92 Regulated Persons may use the already available information and data for existing Clients, in accordance with the requirements of [Regulation](#)



[\(EU\) No 2016/679](#), and when such information and data are relevant and up to date.

R.5.5.93 Prior to the conclusion of a Credit Agreement, Regulated Persons shall assess the creditworthiness and risk profile of the Client on the basis of sufficient information, where appropriate, obtained from the Client and, where necessary on the basis of a consultation of a database maintained for the purposes of assessing creditworthiness.

If the Regulated Person and the Client agree to change the total amount of credit after the conclusion of the Credit Agreement, the Regulated Person shall:

- a. update the financial information at its disposal concerning the Client; and
- b. re-assess the Client's creditworthiness, before the total amount of credit is significantly increased.

R.5.5.94 If Regulated Persons have concerns regarding the accuracy and reliability of the information and data, they should make necessary checks and reasonable enquiries with the Client and third parties (e.g. employer, public authorities, relevant databases), and take reasonable steps to verify the information and data collected. Before making such enquiries with third parties regarding the Client's personal data, Regulated Persons should ensure that the requirements, in particular with regard to informing and seeking permission from the Client, of [Regulation \(EU\) No 2016/679](#) are met.

R.5.5.95 Regulated Persons should have an accurate and singular view that enables an assessment of the Client's ability to service and repay financial commitments. This singular view should be supplemented by the information provided by the Client on the assets and liabilities held at other Regulated Persons or other institutions.

R.5.5.96 If the Client is likely to face financial difficulties in meeting the contractual obligations of the Credit Agreement, Regulated Persons should request from the Client reliable documentation demonstrating realistic projections of their ability to maintain solvency. In this case, both information from third parties, such as tax advisors, auditors and other experts, and information from Clients may be used.

R.5.5.97 If a Credit Agreement involves guarantees from third parties, Regulated Persons should have a sufficient level of information and data necessary to assess the guarantee and, when relevant, the financial position of the guarantor.

- R.5.5.98 If the Client is a member of a group of connected clients, Regulated Persons should collect the necessary information on relevant related connected clients, in accordance with the EBA Guidelines on connected clients, especially when repayment is reliant on cash flow emanating from other connected parties in the same group.
- G.5.5.7 By way of clarification, where the applicant relies on dividends or salaries from connected companies, analysis of those companies shall be made to make sure that these income sources are sustainable.*
- R.5.5.99 Regulated Persons should document the information and data that led to credit approval, including the actions and assessments carried out by them, and maintain this documentation in an accessible form (readily available for the MFSA and other competent authorities) for at least the duration of the Credit Agreement.
- G.5.5.8 It is considered good practice for Regulated Persons and, where relevant, Credit Intermediaries, that when verifying the Client's income, expenses, and other financial and economic circumstances, these shall use necessary, sufficient and proportionate information that can be evidenced and that is provided by sources that are independent of the Client.*
- G.5.5.9 Pursuant to G.5.5.8, as well as requiring such type of information, there is a need for adequate records to be kept in order to substantiate the robustness of the checks made. This will allow Regulated Persons to review and ensure their own adherence to responsible lending principles and that this could be subsequently demonstrated to the Competent Authority. It is therefore considered good practice for Regulated Persons to specify their approach to income verification and the records to be kept.*
- G.5.5.10 Regulated Persons are also likely to need to make realistic assumptions about future circumstances. A responsible lending decision might be informed by an awareness of the potential for interest rate changes and foreseeable events (e.g. the likelihood of the Client's income changing where the Credit Agreement extends into retirement).*
- It is therefore considered good practice to:*
- a. specify aspects of the detailed creditworthiness assessment (such as the information to be gathered about the Client's personal circumstances and financial situation) or assumptions to be used in the creditworthiness; and*

*b. specify lending thresholds that might act as a backstop to any individual assessment of affordability.*

*G.5.5.11 Due to the fact that it is somewhat more complex to verify a Client's expenditure, Regulated Persons are expected to consider a range of available information, both actual or modelled, to enhance the creditworthiness assessment. This will therefore require the Regulated Person in considering the Client's net disposable income, after meeting all their expenditure and commitments, and hence including risk limits in their internal loan policies, such as specifying minimum levels of net disposable income.*

## 5.A.5 Additional Assessment Factors for Credit Agreements

- R.5.5.100 When necessary, particularly in cases of Clients who are self-employed or who have seasonal or other irregular income, Regulated Persons should make reasonable enquiries and take reasonable steps to verify the information regarding the source of repayment capacity.
- R.5.5.101 If the term of the Credit Agreement extends past the Client's expected retirement age, Regulated Persons should take appropriate account of the adequacy of the Client's likely source of repayment capacity and their ability to continue to meet obligations under the Credit Agreement when in retirement.
- R.5.5.102 When assessing the Client's ability to meet obligations under the Credit Agreement, Regulated Persons should account for committed and other non-discretionary expenditures, such as the Client's current obligations, including appropriate substantiation and consideration of living expenses.
- R.5.5.103 As part of the creditworthiness assessment, Regulated Persons should carry out sensitivity analyses reflecting:
- a. potential negative events in the future, including a reduction in income;
  - b. an increase in interest rates in cases of variable rate Credit Agreements;
  - c. negative amortisation of the loan; and
  - d. balloon payments or deferred payments of the principal or interest.

- R.5.5.104 In the case of foreign currency loans, Regulated Persons should also factor into the assessment of the Client's capacity to meet the obligations, potential negative scenarios of the exchange rate between the currency of the Client's income and the currency of the Credit Agreement. Regulated Persons should also take into account and assess any hedging strategies and actual hedges in place, including natural hedges, to mitigate foreign currency exchange risk.
- R.5.5.105 Where necessary, in particular in cases of Clients who are self-employed or have seasonal or other irregular income, Regulated Persons should make reasonable enquiries and take reasonable steps to assess and verify the source of repayment capacity.
- R.5.5.106 Regulated Persons should ensure that the Client's ability to meet obligations under the Credit Agreement is not based on an expected significant increase in the Client's income, unless the documentation provides sufficient evidence to this effect.
- R.5.5.107 As part of the creditworthiness assessment, Regulated Persons should carry out sensitivity analyses to reflect potential negative events specific to the type of Credit Agreement that may occur in the future. When relevant, Regulated Persons should also consider the implication of foreign currency exchange rate risk.

## 5.A.6 Credit Approval

- R.5.5.108 In order to carry out a reliable and accurate creditworthiness assessment, Regulated Persons should draft and retain relevant documentation regarding Credit Agreements and the credit approval process in a way that helps identify and prevent a misrepresentation of the information by the Client, Credit Intermediary or Staff members of the Regulated Person that are involved with the assessment of the application.
- R.5.5.109 Each creditworthiness assessment undertaken by the Regulated Person should be properly documented and used as the basis of the proposal to approve or decline the Credit Agreement application by the relevant credit decision-maker. The documented outcome of the creditworthiness assessment itself should be able to justify the proposal to approve or decline the Credit Agreement application.

- R.5.5.110 The decision to approve or decline the Credit Agreement application (subsequently referred to as the credit decision) should be taken by the relevant credit decision-maker, in accordance with the Regulated Person's policies and procedures and governance arrangements.
- R.5.5.111 The credit decision should be clear and well documented and include all the conditions and pre-conditions, including those aimed at mitigating the risks identified in the creditworthiness assessment, for the Credit Agreement in question and its disbursement.
- R.5.5.112 The credit decision should clearly articulate a maximum period for its validity. If an approved transaction is not executed within this period, a new credit proposal should be submitted for approval.
- R.5.5.113 The conclusion of the Credit Agreement should not take place unless the Regulated Person has verified that all pre-conditions and conditions that have been set out in the credit decision are fulfilled. The disbursement should take place only after the Credit Agreement has been finalised and entered into.
- R.5.5.114 Without prejudice to the Rule and Guidelines included in Chapter 4 of this Rulebook, Regulated Persons should ensure that decisions are taken impartially and objectively and are not adversely affected by any conflict of interest. More specifically, Regulated Persons should ensure that any individual involved in credit decision-making, such as members of Staff and members of the Management Body, do not take part in credit decisions in any of the following instances:
- a. if any individual involved in credit decision-making has a personal or professional relationship with the Client;
  - b. if any individual involved in credit decision-making has an economic or any other interest, including direct or indirect, actual or potential, financial or non-financial, associated with the Client;
  - c. if any individual involved in credit decision-making has undue political influence on or a political relationship with the Client.
- R.5.5.115 Without prejudice to the Rule and Guidelines included in Chapter 4 of this Rulebook, Regulated Persons should have policies, procedures and organisational controls in place that guarantee and ensure objectivity and impartiality in the credit decision-making process. These policies, procedures and organisational controls, including any mitigating measures, should be clearly defined and understood, and should address any potential conflicts of interest. Regulated Persons should ensure effective oversight of the decisions taken by credit decision-

makers, including credit granting, to ensure their objectivity and impartiality.

## Part B: Credit Agreements relating to Residential Immovable Property

### 5.B.1 Applicability

R.5.5.116 In addition to the applicability of Part A of Section 5 to this Chapter, the Rules and Guidance under this Part shall solely apply to Credit Agreements relating to Residential Immovable Property as set out in the Glossary of Definitions to this Rulebook. The term Credit Agreements within this Part shall therefore be construed as a reference to Credit Agreements relating to Residential Immovable Property.

### 5.B.2 General Requirements

R.5.5.117 A Regulated Person shall, before concluding a Credit Agreement, make a thorough assessment of the Client's creditworthiness, taking appropriate account of factors relevant to verifying the prospect of the Client to meet his obligations under the Credit Agreement.

R.5.5.118 Regulated Persons shall establish, document and maintain the procedures and Information on which the assessment referred to in R.5.5.117 is based.

R.5.5.119 The assessment of creditworthiness shall not rely predominantly on the value of the immovable property exceeding the amount of the credit or on the assumption that the immovable property will increase in value unless the purpose of the Credit Agreement is to construct or renovate the immovable property.

R.5.5.120 Where a Regulated Person concludes a Credit Agreement with a Client, the Regulated Person shall not subsequently cancel or alter the Credit Agreement to the detriment of the Client on the grounds that the assessment of creditworthiness was incorrectly conducted:

Provided that this Rule shall not apply where it is demonstrated that the Client knowingly withheld relevant information from the Regulated

person or provided falsified Information within the meaning of R.5.5.135 to R.5.5.139.

A declaration is to be signed by the Client at application stage that all relevant information provided is correct, up-to date and that no relevant information was withheld from the Regulated Person.

- R.5.5.121 The Regulated Person shall only make the credit available to the Client where the result of the creditworthiness assessment indicates that the obligations resulting from the Credit Agreement are likely to be met in the manner required under that agreement.
- R.5.5.122 The Regulated Person shall, in accordance with the [Data Protection Act \(Cap. 586\)](#) and the [General Data Protection Regulation \(EU\) 2016/679](#), inform the Client in advance that a database is to be consulted.
- R.5.5.123 Where an application for credit is rejected, the Regulated Person shall inform the Client without delay of the rejection in accordance with R.5.5.126 to R.5.5.133.
- R.5.5.124 The Regulated Person shall, before any significant increase in the total amount of credit is granted to the Client after the conclusion of the Credit Agreement, and unless such additional credit was envisaged and included in the original creditworthiness assessment, re-assess the Client's creditworthiness on the basis of the updated Information.
- R.5.5.125 Rules R.5.5.117 to R.5.5.124 shall be without prejudice to the [Data Protection Act \(Cap. 586\)](#) and the [General Data Protection Regulation \(EU\) 2016/679](#).
- R.5.5.126 Where the assessment of the Client's creditworthiness results in a negative prospect for his ability to repay the credit over the lifetime of the Credit Agreement, the Regulated Person shall refuse to provide such credit.
- R.5.5.127 Where the application for credit is rejected, the Regulated Person shall inform the Client without delay and free of charge of the rejection, of the reasons for rejection and, where applicable, that the decision is based on automated processing of data.
- R.5.5.128 The Regulated Person should keep a log detailing when communication with the Client about the rejection was made, which medium of communication was used and including a confirmation that the reason for rejection was provided.



R.5.5.129 Where the rejection of an application for credit is based on the result of the database consultation, the Regulated Person shall inform the Client without delay and free of charge of the result of such consultation and of the particulars of the database consulted, including the name of the database that was consulted as well as its controller and of the Client's right to access and, where necessary, his right to rectify his data in that database:

Provided that the Regulated Person shall not be required to give such Information if the Information to be provided is prohibited by any other law, or is contrary to the public policy or public security of Malta.

R.5.5.130 Where the application is rejected on the basis of an automated decision or a decision based on methods such as automated credit scoring, the Regulated Person shall inform the Client without delay and free of charge.

R.5.5.131 The Regulated Person shall explain the logic involved in the automated decision to the Client.

R.5.5.132 The Client shall have the opportunity to request for the decision to be reviewed manually.

R.5.5.133 Rules R.5.5.126 to R.5.5.132 shall be without prejudice to the [Data Protection Act \(Cap. 586\)](#) and the [General Data Protection Regulation \(EU\) 2016/679](#).

R.5.5.134 As part of the process in establishing its models for creditworthiness assessments and credit decision-making, the Regulated Person and, where applicable, the Credit Intermediary, is to actively inform and clearly emphasise to a Client, that for the Regulated Person to be able to conduct a proper assessment of the Client's creditworthiness and make a decision on whether or not to grant the credit under the Credit Agreement, it is important that the Client:

- a. provides complete and correct information on his or her financial situation and personal circumstances in the context of the application process for credit. This is particularly relevant in the context of the Client's response to the Regulated Person's request for information referred to in R.5.5.138; and
- b. provides the requested documentation supporting the information provided in terms of paragraph (a), including verifiable evidence and, or where necessary, independently verifiable evidence, within the timeframe specified by the Regulated Person.

### 5.B.3 Information and Documentation for the purpose of the Creditworthiness Assessment in terms of Credit Agreements relating to Residential Immovable Property.

R.5.5.135 The assessment of creditworthiness referred to in Rules R.5.5.117 to R.5.5.125 shall be carried out on the basis of information on the Client's income and expenses and other financial and economic circumstances which are necessary, sufficient and proportionate.

R.5.5.136 The information referred to in R.5.5.135 shall be obtained by the Regulated Person from relevant internal or external sources, including the Client, and including information provided to a Credit Intermediary during the application process of the credit.

Provided that, such information shall be appropriately verified, including, when necessary, through reference to independently verifiable documentation. The term *'independently verifiable documentation'* is intended to include, amongst others, sources and evidence that are independent of the Client and information which is verified by an independent third party.

For the avoidance of doubt, this means that the following examples are not deemed to constitute *'independently verifiable documentation'*:

- (a) the income accounts or statements are certified or verified by the Client himself or herself as an accountant by profession, or by the spouse of the Client who is an accountant by profession; or
- (b) the Client is a legal person and the income statements or forecasts are certified or verified by a director or shareholder of the said legal person who is an accountant by profession.

Provided further, that such information shall be up to date at that moment in time, and on reasonable assumptions as to the Client's situation over the term of the proposed Credit Agreement.

R.5.5.137 Credit Intermediaries shall accurately submit the necessary information obtained from the Client to the relevant Regulated Person to enable the creditworthiness assessment to be carried out.

R.5.5.138 Regulated Persons shall specify in a clear and straightforward way at the pre-contractual phase the necessary information and independently

verifiable evidence that the Client needs to provide and the timeframe within which the Client needs to provide such Information.

Provided that such request for Information shall be proportionate and limited to what is necessary to conduct a proper creditworthiness assessment;

Provided further that, where necessary to enable the assessment of creditworthiness, Regulated Persons may seek clarification of the Information received in response to that request.

R.5.5.139 A Regulated Person shall not terminate the Credit Agreement on the grounds that the information provided by the Client before the conclusion of the Credit Agreement was incomplete:

Provided that the Regulated Person may terminate the Credit Agreement where it is demonstrated that the Client knowingly withheld or falsified the Information.

R.5.5.140 The Regulated Person, or where relevant the Credit Intermediary shall warn the Client that, where the Regulated Person is unable to carry out an assessment of the creditworthiness because the Client chooses not to provide the information or verification necessary for an assessment of creditworthiness, the credit cannot be granted.

This warning may be provided in a standardised format.

R.5.5.141 Rules R.5.5.135 to R.5.5.140 shall be without prejudice to the [Data Protection Act \(Cap. 586\)](#) and the [General Data Protection Regulation \(EU\) 2016/679](#).

R.5.5.142 Without prejudice to the provisions of the [Data Protection Act \(Cap. 586\)](#), personal data obtained from a Client or any other person in connection with the conclusion and management of any Credit Agreement may only be processed for the purpose of assessing the Client's creditworthiness or of any such other person and their ability to repay in accordance with the Rules and Guidelines under this Rulebook.

## 5.B.4 Credit Agreements secured by Immovable Property other than Residential Immovable Property

- R.5.5.143 For Credit Agreements that relate to the purchase of immovable property which shall not be occupied as a place of residence by the Client or a family member, Rules R.5.5.144 to R.5.5.146 shall apply.
- R.5.5.144 If the property is still being constructed and is intended to provide, upon completion, an income to its owner in the form of rents or profits from its sale, Regulated Persons should assess the development phase and the phase after the completion of the development, when the project converts into an income-producing property. For the purposes of such Credit Agreements, Regulated Persons should establish that:
- a. the Client has a plausible plan related to the project, including estimates of all costs associated with the development;
  - b. the Client has access to builders, architects, engineers and contractors, who will take part in the development; and
  - c. the Client has obtained or is able to obtain in the future all necessary permits and certificates for the development, as the project progresses.
- R.5.5.145 Regulated Persons should assess the relationship between any potential future rental income from the immovable property in question and the Client's ability to meet obligations.
- R.5.5.146 In addition to the details about sensitivity analysis as included under R.5.5.103 and R.5.5.104, Regulated Persons should, for the purpose of sensitivity analysis in the case of these Credit Facilities also consider:
- a. deterioration in the marketability of the immovable property,
  - b. an increase in vacancy rates, and
  - c. a reduction in the rental prices for similar properties.

## 5.B.5 Lending Credit to Clients in the form of Micro Enterprises

### *5.B.5.1 General Requirements*

- R.5.5.147 Regulated Persons should assess the Client's current and future ability to meet the obligations under the loan agreement. Regulated Persons should also analyse the loan application of the Client in order to ensure that the application is in line with the Regulated Person's credit risk

appetite, policies, credit-granting criteria, limits and relevant metrics, as well as any relevant macroprudential measures, where applied by the designated macroprudential authority.

- R.5.5.148 Regulated Persons should consider that cash flow from the ordinary business activities of the Client and, when applicable within the purpose of the Credit Agreement, any proceeds on the sale of the assets are the primary sources of repayment.
- R.5.5.149 When assessing the creditworthiness of the Client, Regulated Persons should put emphasis on the Client's realistic and sustainable future income and future cash flow, and not on available collateral. Collateral by itself should not be a predominant criterion for approving a loan and cannot by itself justify the approval of any Credit Agreement. Collateral should be considered the Regulated Person's second way out in case of default or material deterioration of the risk profile, and not the primary source of repayment, with the exception of when the Credit Agreement envisages that the repayment of the loan is based on the sale of the property pledged as collateral or liquid collateral provided.
- R.5.5.150 When carrying out the creditworthiness assessment, Regulated Persons should:
- a. analyse the financial position and credit risk of the borrower, as set out below;
  - b. analyse the business model and strategy of the borrower, as set out below;
  - c. determine and assess the borrower's credit scoring or internal rating, where applicable, in accordance with the credit risk policies and procedures;
  - d. consider all the borrower's financial commitments, such as drawn and undrawn committed facilities with institutions, including working capital facilities, credit exposures of the borrower and the past repayment behaviour of the borrower, as well as other obligations arising from tax or other public authorities or social security funds;
  - e. when relevant, assess the structure of the transaction, including the risk of structural subordination and related terms, e.g. covenants, and, if applicable, third-party guarantees and collateral structure.
- R.5.5.151 Regulated Persons should carry out the creditworthiness assessment in relation to the specificities of the loan, such as nature, maturity and interest rate.
- R.5.5.152 For assessing the Client's ability to meet obligations under the Credit Agreement, Regulated Persons should adopt suitable methods and

approaches, which may include models, as long as these guidelines are met. The selection of the suitable and adequate method should depend on the risk level, size and type of loan.

- R.5.5.153 If the Client is a member of a group of connected clients, Regulated Persons should carry out the assessment at individual level and, where relevant, at group level, especially when repayment is reliant on cash flow emanating from other connected parties. If the Client is a member of a group of connected clients linked to central banks and sovereigns, including central governments, regional and local authorities, and public sector entities, Regulated Persons should assess the individual entity.
- R.5.5.154 For lending activities with cross-border elements (e.g. trade finance, export finance), Regulated Persons should take into account the political, economic and legal environment in which the foreign counterparty of the Regulated Person's Client operates. Regulated Persons should assess the buyer's ability to transfer funds, the supplier's capacity to deliver the order, including its capacity to meet the applicable local legal requirements, and the supplier's financial capacity to handle possible delays in transaction.
- R.5.5.155 Regulated Persons should assess the Client's exposure to ESG factors, in particular environmental factors and the impact on climate change, and the appropriateness of the mitigating strategies, as set out by the Client. This analysis should be performed on a Client basis; however, when relevant, Regulated Persons may also consider performing this analysis on a portfolio basis.
- R.5.5.156 In order to identify Clients that are exposed, directly or indirectly, to increased risk associated with ESG factors, Regulated Persons should consider using heat maps that highlight, for example, climate-related and environmental risks of individual economic (sub-)sectors in a chart or on a scaling system. For loans or Clients associated with a higher ESG risk, a more intensive analysis of the actual business model of the Client is required, including a review of current and projected greenhouse gas emissions, the market environment, supervisory ESG requirements for the companies under consideration and the likely impacts of ESG regulation on the Client's financial position.

### *5.B.5.2 Analysis of the Client's Financial Position*

- R.5.5.157 For the purposes of the analysis of the financial position within the creditworthiness assessment as specified in R.5.5.147 to R.5.5.156, Regulated Persons should consider the following:
- a. both the current and the projected financial position, including balance sheets, source of repayment capacity to meet contractual obligations, including under possible adverse events, and, where relevant, capital structure, working capital, income and cash flow;
  - b. where relevant, the Client's leverage level, dividend distribution, and actual and projected/forecasted capital expenditure, as well as its cash conversion cycle in relation to the facility under consideration;
  - c. where relevant, the exposure profile until maturity, in relation to potential market movements, such as exposures denominated in foreign currencies and exposures collateralised by repayment vehicles;
  - d. where applicable, the probability of default, based on credit scoring or internal risk rating;
  - e. the use of appropriate financial, asset class-specific or product type-specific metrics and indicators, in line with their credit risk appetite, policies and limits, including considering metrics in Annex III to this Chapter to an extent that is applicable and appropriate to the specific credit proposal.
- R.5.5.158 Regulated Persons should ensure that the financial projections used in the analysis are realistic and reasonable. These projections/forecasts should be at least based on projecting historical financial data forward. Regulated Persons should assess if these projections are in line with the Regulated Person's economic and market expectations. When Regulated Persons have material concerns about the reliability of these financial projections, they should make their own projections of the Clients' financial position and repayment capacity.
- R.5.5.159 When assessing the Clients' financial position, Regulated Persons should assess the sustainability and feasibility of the future repayment capacity under potential adverse conditions that are relevant to the type and purpose of the loan and may occur in the duration of the loan agreement. These events may include a reduction in income and other cash flow; an increase in interest rates; negative amortisation of the loan; deferred payments of principal or interest; deterioration in the market and operating conditions for the Client; and foreign currency exchange rate changes, when relevant.



### *5.B.5.3 Analysis of the Client's Business Model and Strategy*

- R.5.5.160 Regulated Persons should assess the business model and strategy of the Clients, including in relation to the purpose of the Credit Agreement.
- R.5.5.161 Regulated Persons should assess the Client's knowledge, experience and capacity to manage business activities, assets or investments linked to the Credit Agreements (e.g. specific property for a real estate loan).
- R.5.5.162 Regulated Persons should assess the feasibility of the business plan and associated financial projections, in line with the specificities of the sector in which the Client operates.
- R.5.5.163 Regulated Persons should assess the Client's reliance on key contracts, customers or suppliers and how they affect cash flow generation, including any concentrations.
- R.5.5.164 Regulated Persons should assess the presence of any potential key-person dependency with regard to the borrower and, when necessary, identify, together with the borrower, possible mitigation measures.

### *5.B.5.4 Assessment of Guarantees and Collateral*

- R.5.5.165 Regulated Persons should assess any pledged collateral that is used for the purposes of risk mitigation against the requirements for collateral set out in the Regulated Person's credit risk appetite, policies and procedures, including the valuation and ownership, and check all relevant documentation (e.g. whether property is registered in appropriate registers).
- R.5.5.166 Regulated Persons should assess any guarantees, covenants, negative pledge clauses and debt service agreements that are used for the purposes of risk mitigation.
- R.5.5.167 When relevant to credit decisions, Regulated Persons should assess the Client's equity and credit enhancements, such as mortgage insurance,

take-out commitments and repayment guarantees from external sources.

- R.5.5.168 If a Credit Agreement involves any form of guarantees from third parties, Regulated Persons should assess the level of protection provided by the guarantee, and if relevant, conduct a creditworthiness assessment of the guarantor, applying the relevant provisions of this Rulebook, depending on whether the guarantor is a natural person or an enterprise. The creditworthiness assessment of the guarantor should be proportionate to the size of the guarantee in relation to the Credit Agreement and the type of guarantor.

## Section 6: Pre-contractual Information and Obligations on Property Valuation

- R.5.6.169 Pursuant to R.1.2.94(p), when carrying out a property valuation of residential immovable property for the purpose of Credit Agreements relating to Residential Immovable Property, a Regulated Person shall use reliable standards, or take reasonable steps to ensure that reliable standards are applied, where such a property valuation is conducted by a third-party.
- R.5.6.170 A Regulated Person shall ensure that internal and external appraisers conducting property valuations referred to in R.5.6.169 are professionally competent and sufficiently independent from the credit underwriting process so that they can provide an impartial and objective valuation, which shall be documented in a Durable Medium and of which a record shall be kept by the Regulated Person.

## Section 7: General Requirements relating to Payment Accounts

### 7.1 General Requirements

- R.5.7.171 Regulated Persons shall ensure that, as a minimum, Payment Accounts with basic features shall be offered in Euro. Such Payment Accounts may,

at the sole discretion of the Regulated Person, also be offered in the currency of any other Member State.

- R.5.7.172 Regulated Persons shall allow Clients to execute an unlimited number of operations in relation to the services linked to a Payment Account with basic features as set out in the Glossary of Definitions.
- R.5.7.173 A Regulated Person shall allow Clients to manage and initiate payment transactions from the Client's Payment Account with basic features:
- a. at its publicly accessible premises; and
  - b. via online facilities, where available.
- R.5.7.174 Without prejudice to the requirements laid down in the provisions of [Directive 2008/48/EC](#) as transposed in the [Consumer Credit Regulations](#), a Regulated Person may, upon the Client's request, provide an overdraft facility in relation to a Payment Account with basic features:
- Provided that, access to, or use of, the Payment Account with basic features shall not be restricted by, or made conditional on, the purchase of such an overdraft facility.
- R.5.7.175 Regulated Persons shall offer the services linked to a Payment Account with basic features referred to in the Glossary of Definitions, R.1.4.178 and R.5.7.171 to R.5.7.174 free of charge or for a reasonable fee, irrespective of the number of operations executed on the Payment Account with basic features.
- R.5.7.176 Regulated Persons shall ensure that any fees charged to the Client for non-compliance with the Client's commitments laid down in the framework contract are reasonable.
- R.5.7.177 Regulated Persons shall ensure that the reasonable fees referred to in R.5.7.175 and R.5.7.176 are established taking into account at least the following criteria:
- a. national income levels; and
  - b. average fees charged by other Regulated Persons in Malta for services provided on Payment Accounts.
- R.5.7.178 Without prejudice to R.5.7.179, R.5.7.180 and R.5.7.183, framework contracts for the provision of a Payment Account with basic features shall comply with the provisions laid down in Maltese Law transposing the requirements of [Directive 2014/92/EU](#).

- R.5.7.179 Regulated Persons may only unilaterally terminate a framework contract for the provision of a Payment Account where at least one of the following conditions is met:
- a. the Client has deliberately used the Payment Account for illegal purposes;
  - b. There has been no transaction on the account, save for any interest debited or credited from the account, for more than twenty-four consecutive months;
  - c. The Client provided incorrect information when applying for the Payment Account, and had the correct information been provided, the application would have been refused;
  - d. The Client is no longer legally resident in Malta or in another European Union Member State; and
  - e. the Client has subsequently opened a second Payment Account in Malta which qualifies as a Payment Account.
- R.5.7.180 Any termination which has been effected in accordance with R.5.7.179(a) and (c) shall have immediate effect.
- R.5.7.181 In cases of terminations referenced under R.5.7.180, the Regulated Person shall, upon termination of the framework contract, inform the Client of the grounds and the justification for termination in writing, by means of registered mail and recorded delivery mail to the last known address.
- R.5.7.182 Pursuant to the requirements of the above rules, a Regulated Person shall not enforce the termination of a framework contract for a Payment Account retrospectively such that any interest or any other form of income generated by the Client from holding the Payment Account or any associated fees, costs and charges incurred by the Client up to the date when the decision to initiate the termination process according to R.5.7.183 is made, will be reversed.
- R.5.7.183 If a Regulated Person decides that it should terminate a framework contract for a Payment Account on one or more of the grounds mentioned in Rule R.5.7.179(b), (d), (e), or in any additional limited and specific cases as may be prescribed by the Minister, it shall, unless such disclosure would be contrary to objectives of national security or public policy, inform the Client of the grounds and the justification for termination:
- a. at least two months before the termination enters into force;
  - b. free of charge; and
  - c. in writing, by means of registered mail and recorded delivery mail to the last known address

Provided that, if, after three attempts by the Regulated Person to inform the Client of such termination in accordance with indent (c), such attempts prove to be futile or are rejected by the Client, or if the Client fails to act in terms of the said notice, the Regulated Person has the right to terminate the framework contract within ninety days from the date of the third notice.

- R.5.7.184 Any notification given by the Regulated Person in terms of R.5.7.183 shall advise the Client of:
- a. the procedure for submitting a Complaint to it against the termination;
  - b. the possibility to contact the MFSA and provide the relevant contact details; and
  - c. the right to lodge a complaint with the Office of the Arbiter for Financial Services and provide the relevant contact details.

- R.5.7.185 The Regulated Person shall keep proper records of its decision for termination and any notifications thereto.

- R.5.7.186 Where there is sufficient grounds for a Regulated Person to close or block a Client's Payment Account, the Regulated Person shall inform the Client with its intention to do so within a reasonable time before taking such action, insofar as permitted by law to do so.

Furthermore, wherever permitted by law, the Regulated Person should also provide the Client with the reason as to why the Payment Account is being closed or blocked and what remedial action could be taken by the Client in order to reverse such closure or blocking.

## 7.2 Dealing with Dormant Accounts

- R.5.7.187 A Regulated Person may classify a Payment Account as a Dormant Account if the Client does not perform any activity on the account for a period of twenty-four consecutive months, save for any interest debited or credited from the account and/or any service charges.

- R.5.7.188 A Regulated Person should inform the Client in writing and through a durable medium that a Payment Account is about to be classified as Dormant at least 30 calendar days in advance of classifying such account as Dormant unless action is taken by the Client. Such written communication should include, as a minimum:

- a. clear and specific reference to which account the communication is relating to;
- b. the actual date when the said account will be classified as a Dormant Account;
- c. the implications, including any fees and charges, of having a Payment Account being classified as Dormant, clarifying how any fees and charges are to be debited to any of the Client's accounts with the Regulated Person; and
- d. any action that can be taken by the Client to prevent such account from being categorised as a Dormant Account.

R.5.7.189 Once categorised as a Dormant Account, a Regulated Person can charge an administration fee to the Client's account on a periodic basis, which is by best practice normally charged annually, in line with the Regulated Person's tariff of charges and which is denominated in the same currency of the account being categorised as Dormant.

R.5.7.190 If the balance on the account is not sufficient to cover the administrative fee, the Regulated Person can exercise the right to initiate the process of terminating a Client's Account in accordance with the aforementioned requirements of this Section, including the respective notifications and timely communications with the Client immediately after debiting the full balance available on the Account in favour of the administrative fee being charged, unless corrective action is taken by the Client to re-activate the Dormant Account, provided that in no time the account of the Client shall become with a debit balance.

R.5.7.191 Pursuant to R.5.7.190, if the Client holds other Payment Accounts with the same Regulated Person that are not classified as Dormant and the terms and conditions related to a particular type of account permits the Regulated Person to do so, the Regulated Person can charge any remaining balance of the administrative fee due by the Client from any such non-Dormant Accounts, even if the latter are held in a different currency or carry a different credit interest rate.

Wherever possible, the Regulated Person should first opt for the Account which is closest to the Dormant Account in terms of characteristics and type to charge any remaining balance of the administrative fee on Dormant Account.

R.5.7.192 In instances where the administrative fee on a Dormant Account, or any balance thereof, is going to be debited from a different Payment Account held in a different currency, the Regulated Person shall disclose to the

Client the rate of exchange used to convert such a fee or balance thereof. The rate of exchange shall be fair and in line with market rates.

- R.5.7.193 If the balance on the Payment Account is more than the amount of the administrative fee, the Regulated Person shall retain the Dormant Account open and debit the administrative fee every period in line with its tariff of charges, up to the point where the balance has been exhausted, as long as the account is not re-activated.
- R.5.7.194 The Regulated Person shall inform the Client in writing and through a durable medium immediately once a Payment Account has been categorised as Dormant. Such written communication should include, as a minimum:
- a. clear and specific reference to which account the communication relates to;
  - b. the actual date when the said account has been classified as a Dormant Account;
  - c. the implications, including any fees and charges, on the Payment Account being classified as Dormant;
  - d. what action needs to be taken by the Client to reinstate the Dormant Account into an active Payment Account; and
  - e. if no such remedial action is taken by the Client, details in relation to the process that the Regulated Person will subsequently follow, (e.g. a description of the termination process of the Dormant Account which may follow and the fact that any administrative fee will continue to be charged as long as the said account remains Dormant) including an explanation of what will happen with the balance of funds if and when the account is closed (e.g. being transferred to another Payment Account with the same Regulated Person).

The information included in paragraphs (a) to (e) shall be consistent with the information included for the purposes of R.5.7.188(a)-(c) for the same type of information.

## Section 8: Variation of Terms and Conditions

### 8.1 Applicability

- R.5.8.195 The Rules under this section shall apply to all Retail Products, subject to applicable legislation placing restrictions on the manner in which



contracts may be modified at law. This includes, but is not limited to, the [Consumer Affairs Act \(Cap. 378\)](#) which, amongst others, specifies that the following are unfair contract terms whose use in consumer contracts is unlawful:

- a. Clauses enabling the trader to alter the terms of a contract unilaterally, without a valid reason which is specified in the contract; and
- b. Clauses enabling the trader to alter unilaterally, without a valid reason, any characteristics of the product or service to be provided.

## 8.2 General Requirements

- R.5.8.196 Regulated Persons should advise Clients to read and understand the terms and conditions when applying for Retail Products and Services. Regulated Persons should allow Clients reasonable opportunity to review the terms and conditions at a reasonably sufficient stage before concluding the Credit Agreement in question. Where electronic devices are used in branches and in other face to-face situations to present the terms and conditions to Clients, Regulated Persons should, upon the Client's request, make available alternative means to review the relevant information.
- R.5.8.197 Regulated Persons may vary the terms and conditions of a Retail Product or Service contract on the basis of a variation clause, if any such clause is valid, fair and enforceable. However, the absence of such variation clause does not prohibit the Regulated Person to exercise Forbearance Measures.
- R.5.8.198 Where rates and charges under a Credit Agreement are variable, the Regulated Person must:
- a. before entering into the Credit Agreement, explain to the Client the consequences of such variations on the amount of periodic instalments payable and on the total amount payable;
  - b. only increase rates or charges to recover genuine increases in costs which have an effect on the credit provided under the Credit Agreement; and
  - c. explain to the Client before changing any rate or charge under the Credit agreement.
- R.5.8.199 Where a Regulated Person has a right to increase the interest rate under a regulated Credit Agreement, it must not increase the interest rate unless there is a valid reason for doing so.

- R.5.8.200 Regulated Persons should give Clients two months' notice before a variation to the following takes effect:
- a. terms and conditions effecting fees and charges; and
  - b. terms and conditions effecting liabilities or obligations of Clients.

For any other variation, Regulated Persons should give Clients reasonable notice before such variation takes effect.

- R.5.8.201 Where a Regulated Person exercises a right to increase a rate of interest based on a change in the risk presented by the Client on the basis of the terms and conditions of the credit agreement, the Regulated Person must:
- a. notify the Client that the rate of interest will be increasing based on a change in risk presented by the Client, at least 60 days prior to the effective date of change, and with clear reasoning behind such change; and
  - b. the Regulated Person must ensure that such increase should cease to apply when the reason behind the increase is addressed by the Client.

- R.5.8.202 In cases where a variation to contractual terms and conditions has been proposed by the Regulated Person and such variation is not covered by a variation clause, the Client may choose to refuse such variation.

- R.5.8.203 In case the Client refuses the variation and decides to terminate the Retail Product or Service, the Regulated Person should not charge any fees for the termination under the following conditions:
- a. the variation of the terms and conditions is considered key and relevant to the specific Retail Product or Service; or
  - b. the variation may adversely affect the Client
- and the Client indicates his decision to terminate the Retail Product or Service within the notice period before the variation takes effect.

- R.5.8.204 Where a Client refuses to accept the variation to the terms and conditions and chooses to terminate the Retail Product or Service within the notice period, the Regulated Person should repay to the Client any annual or other periodic fee for that Retail Product or Service on a *pro rata* basis, if the fee has already been paid and, if the fee can be separately distinguished and unless the amount involved is minimal.

- R.5.8.205 A notice of variation to the terms and conditions should clearly demonstrate the variation in question with an explanation in plain language, where appropriate and practical. It should also indicate the ways in which the Client may demonstrate refusal, if possible, and any attaching consequences.

- R.5.8.206 Where the variation involves substantial changes to existing terms and conditions, or the changes are very complicated, the Regulated Person should provide a written summary of the key features of the revised terms and conditions.
- R.5.8.207 Regulated Persons shall issue a full version of the revised terms and conditions to Clients if there are sufficient changes to warrant it, regardless of the nature of the changes.

### 8.3 Information regarding the modification of the terms and conditions of a Credit Agreement

- R.5.8.208 Without prejudice to other obligations provided for in this Chapter, Regulated Persons shall ensure that prior to modifying the terms and conditions of the Credit Agreement, the Regulated Person communicates the following information to the Client:
- a. a clear description of the proposed changes and, where applicable, of the need for the Client's consent or of the changes introduced by operation of law;
  - b. the timescale for the implementation of the changes referred to in paragraph (a);
  - c. the means for complaint available to the Client regarding the changes referred to in paragraph (a);
  - d. the time period available for lodging any such complaint;
  - e. the name and address of the Competent Authority and the Arbiter for Financial Services under the [Arbiter for Financial Services Act \(Cap.555\)](#) to which the Client can submit that complaint.

## Section 9: Termination and Withdrawal

### Part A: General Requirements

- R.5.9.209 Notwithstanding the provisions within this section entitled 'Termination and Withdrawal', the Regulated Person has the right to terminate a

banking relationship in case of inappropriate actions, or the lack of required action, taken by Clients.

- R.5.9.210 Pursuant to R.5.9.209, Regulated Persons must inform the Client about the termination of the banking relationship within the stipulated timeframes as prescribed in the following provisions under this section, while giving due consideration to AML regulations.

## Part B: Consumer Credit Agreements

### 9.B.1 Applicability

- R.5.9.211 In addition to the Rules set out in Part A of Section 9, the Rules and Guidance under this Part shall solely apply to Consumer Credit Agreements as set out in the Glossary of Definitions to this Rulebook. The term Credit Agreements within this Section shall therefore be construed as a reference to Consumer Credit Agreements.

### 9.B.2 Open-end Credit Agreements

- R.5.9.212 A Client is entitled to terminate an open-end Credit Agreement at any time and free of charge.
- R.5.9.213 A Credit Agreement may however provide for a period of notice not exceeding one month before termination can be affected by the Client.
- R.5.9.214 If provided for in the agreement, the Regulated Person may terminate an open-end agreement by giving the Client not less than two months' notice in writing or on a Durable Medium.
- R.5.9.215 The Regulated Person may not terminate the Client's right to drawdown credit under an open-end Client Credit Agreement unless such termination is provided for in the agreement and is for an objectively justified reason.

Amongst others, "objectively justified reasons" shall include suspicion by the Regulated Person that the Client is involved in an unauthorised or fraudulent use of a credit, or that there is a significant risk that the Client will be unable to fulfil his obligation to pay the credit.

- R.5.9.216 Where the Regulated Person intends to terminate the agreement in terms of R.5.9.215, it shall inform the Client in writing or on a Durable Medium of the termination and reasons leading to such termination before the date of termination or, if that is not practicable, immediately thereafter, unless the provision of information would be contrary to public policy or public security or is unlawful.

### 9.B.3 Right to Withdraw

- R.5.9.217 A Client shall have the right to withdraw from a Credit Agreement without giving any reasons.

- R.5.9.218 The Client's right to withdraw must be exercised within fourteen consecutive calendar days, which period starts to run either:
- a. from the day of the conclusion of the Credit Agreement; or
  - b. from the day when the Client receives the contractual terms and conditions if that day is later than the date referred to in indent (a)

Provided that for the purpose of credit facilities granted by Regulated Persons which necessitate the issue of a letter of acceptance, the Credit Agreement shall be deemed to be concluded on the day the Client accepts in writing or on a Durable Medium, the terms and conditions listed in the Credit agreement relative to such credit facilities, including a sanction letter.

- R.5.9.219 When a right of withdrawal is exercised by a Client, such Client shall:
- a. in order to give effect to the withdrawal before the expiry of the period specified in R.5.9.218, notify the Regulated Person in conformity with the information given to the Client by means which can be proved according to law. The deadline shall be deemed to have been met if that notification, whether in writing or on a Durable Medium that is available and accessible to the Regulated Person, is dispatched before the deadline expires; and
  - b. repay to the Regulated Person the credit provided and pay the interest accrued on it which shall be calculated on the basis of the borrowing rate specified in the Credit Agreement. This shall be relevant from the

date the credit was drawn down until the date it is repaid, without any undue delay and no later than thirty consecutive calendar days after giving a notification in accordance with paragraph (a).

Provided that, the Regulated Person shall not be entitled to any other compensation from the Client in the event of withdrawal, except compensation for any non-refundable charges paid by the Regulated Person to any public administrative body.

*G.5.9.12 Regulated Persons should accept any indication that the Client wishes to withdraw as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the Regulated Person should treat the date cited by the Client as the date when the notification was dispatched.*

R.5.9.220 Where an Ancillary Service relating to a Client Credit Agreement is provided by the Regulated Person or by a third party on the basis of an agreement between the third party and the Regulated Person, the Client shall not be bound by the Ancillary Service agreement if he exercises his right of withdrawal in accordance with this section.

R.5.9.221 In virtue of rules R.5.9.217 to R.5.9.220, regulations 7 and 8 of the [Distance Selling \(Retail Financial Services\) Regulations \(Legal Notice 36 of 2005\)](#) shall not apply.

R.5.9.222 R.5.9.217 to R.5.9.220 shall not apply to Credit Agreements which by law are required to be concluded before a Notary Public:

Provided that the non-application of R.5.9.217 to R.5.9.220 is subject to a confirmation by the Notary Public that the Client is guaranteed the rights provided for under R.1.3.117 to R.1.3.121 and R.1.3.131 to R.1.3.138.

## Section 10: Early Repayments, Assignment and Rights of Set-off

### Part A: General Requirements

- R.5.10.223 Where the rights of the Regulated Person under a Credit Agreement are, or the agreement itself is, assigned to a third-party, the Client shall be entitled to raise against that assignee, any defence available to him against the original Regulated Person. Such defence may also include the right to set-off, provided that set-off may only be raised in accordance with the relevant provisions of articles 1196 to 1204 of the Civil Code, which shall apply irrespective of anything to the contrary contained in the Credit Agreement.
- R.5.10.224 Where the rights of the credit are assigned under R.5.10.223, the Client is entitled to be informed of such assignment, except where the original Regulated Person, by agreement with the assignee, continues to service the credit towards the Client.

## Part B: Consumer Credit Agreements

### 10.B.1 Applicability

- R.5.10.225 The Rules under this section shall apply in line with the definition of Consumer Credit Agreements as set out in the Glossary of Definitions of this Rulebook.
- R.5.10.226 Credit Agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months shall only be subject to the provisions stipulated under R.5.10.223 to R.5.10.224.
- R.5.10.227 Credit Agreements which provide for arrangements to be agreed by the Regulated Person and the Client in respect of deferred payments or repayment methods, where the Client is already in default on the initial Credit Agreement and where:
- a. such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and
  - b. the Client would not thereby be subject to terms less favourable than those laid down in the initial Credit Agreement,
- shall only be subject to R.5.10.228 to R.5.10.233.

### 10.B.2 General Requirements



- R.5.10.228 A Client shall have the right to discharge his obligations under a Credit Agreement, in full or in part, before the agreed termination.
- R.5.10.229 If the Client pays the Regulated Person before the agreed termination:
- a. the Client shall be entitled to a reduction of total costs of the credit consisting of the interest and the costs for the remaining duration of the credit; and
  - b. the Regulated Person shall be entitled to a fair and objectively justified compensation for possible costs directly linked to early repayment of credit so long as the early repayment falls within a period for which the borrowing rate is fixed.
- R.5.10.230 The compensation referred to under R.5.10.229(b) may not exceed:
- a. 1% of the amount of credit repaid early, if the period of time between the early repayment and the agreed termination of the Credit Agreement exceeds one year; and
  - b. 0.5% of the amount of credit repaid early, if the period of time between the early repayment and the agreed termination of the Credit Agreement does not exceed one year.
- R.5.10.231 The limitations under R.5.10.230 in terms of the amount of compensation which may be claimed by the Regulated Person shall exceptionally not apply if the Regulated Person proves that the loss suffered from early repayment exceeds the amount determined under the said R.5.10.230.
- R.5.10.232 A Client may claim a corresponding reduction to the compensation claimed by the Regulated Person if the compensation claimed exceeds the loss actually suffered.
- For the purpose of this rule and R.5.10.231, the loss suffered shall consist of the difference between the initial agreed interest rate and the interest rate at which the Regulated Person can lend out the money repaid early on the market at the time of early repayment. Consideration shall also be given to the impact of early repayment on administrative costs.
- R.5.10.233 Compensation for early repayment under R.5.10.230(b) shall not apply:
- a. if the repayment has been made under an insurance contract intended to provide a credit repayment guarantee;
  - b. in the case of an overdraft facility;
  - c. if the repayment falls within a period for which the borrowing rate is not fixed; or
  - d. if the amount of early repayment does not exceed three thousand euro (€3,000) within any period of twelve months.

R.5.10.234 In any case, Regulated Persons may not claim compensation which is in excess to the amount of interest the Client would have paid during the period between the early repayment and the agreed date of termination of the Credit Agreement.

## Part C: Credit Agreements relating to Residential Immovable Property

### 10.C.1 Applicability

R.5.10.235 The Rules under this section shall apply in line with the definition of Credit Agreements relating to Residential Immovable Property as set out in the Glossary of Definitions of this Rulebook. The term Credit Agreements within this Section shall therefore be construed as a reference to Credit Agreements relating to Residential Immovable Property.

### 10.C.2 General Requirements

R.5.10.236 A Client shall have the right to discharge his obligations under a Credit Agreement, in full or in part, before the agreed termination.

R.5.10.237 If the Client pays the credit before the agreed termination:

- a. the Client shall be entitled to a reduction of the total cost of the credit, such reduction consisting of the interest and the costs for the remaining duration of the contract; and
- b. the Regulated Person shall be entitled to a fair and objective compensation, where justified, for possible costs directly linked to the early repayment of the credit in accordance with the Credit Agreement and the information provided in R.1.2.94(i) and R.1.2.107(g) and (h), so long as the early repayment falls within a period for which the borrowing rate is fixed:

Provided that said compensation shall not exceed the financial loss of the Regulated Person and that no sanction is imposed on the Client:

Provided further that in calculating the level of compensation, consideration shall also be given to the impact of early repayment on

administrative costs, irrespective of whether the borrowing rate is fixed or variable.

- R.5.10.238 In determining the compensation for possible costs directly linked to early repayment of credit referred to in R.5.10.237(b), a Regulated Person shall apply the same calculations to all Clients, irrespective of the reason why early repayment was effected.
- R.5.10.239 Where a Client seeks to discharge his obligations under a Credit Agreement before the agreed termination of the Credit Agreement, the Regulated Person shall provide the Client, without delay after receipt of the request, on paper or on another durable medium, with the information necessary to consider that option.
- R.5.10.240 The information referred to in R.5.10.239 shall at least quantify the implications for the Client 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.

## Section 11: Measures related to Arrears, Forbearance and Foreclosure pursuant to Credit Agreements relating to Residential Immovable Property

### 11.1 General Requirements

- R.5.11.241 The Rules and Guidance under this Section shall solely apply to Credit Agreements relating to Residential Immovable Property as set out in the Glossary of Definitions to this Rulebook. The term Credit Agreements within this Section shall therefore be construed as a reference to Credit Agreements relating to Residential Immovable Property.
- R.5.11.242 When a Client goes into payment difficulties in relation to his obligations under a Credit Agreement, the Regulated Person should work with the Client to establish why the financial difficulties have arisen and for the Regulated Person to take appropriate steps.

*G.5.11.13 When dealing with Clients experiencing financial difficulty, i.e. in arrears or in default difficulties, the Regulated Person should pay due regard to the interests of its Clients and treat them fairly.*

R.5.11.243 Any interaction by the Regulated Person with the Client in relation to their payment difficulties should respect the Client's privacy.

R.5.11.244 The Regulated Person, as well as any Credit Intermediary acting on behalf of the Regulated Person, should maintain a level of contact and communication with a Client in payment difficulties that is proportionate to the information requirements and not excessive.

R.5.11.245 The Regulated Person should communicate with the Client clearly and in plain language.

R.5.11.246 The Regulated Person should provide support and, at least, the following information to Clients in payment difficulties:

- a. the number of payments either missed or only paid in part;
- b. the total sum of the payment shortfall;
- c. the charges incurred as a result of the payment shortfall; and
- d. the importance of the Client co-operating with the Regulated Person to resolve the situation.

R.5.11.247 In cases where the Client's payment difficulties persist, the Regulated Person should provide the following information to the Client:

- a. information regarding the consequences of missing payments (e.g. costs, default interest rate, possible loss of property, etc.); and
- b. information about available government/public schemes or support.

R.5.11.248 Regulated Persons shall exercise reasonable Forbearance Measures before foreclosure proceedings are initiated and shall, as a minimum, adopt measures on the handling of arrears.

This without prejudice to R.5.8.197 whereby the exercise of Forbearance Measures does not constitute a variation to the terms and conditions and hence, the absence of a variation clause, does not prohibit a Regulated Person from exercising reasonable Forbearance Measures in line with the requirements of R.5.11.255 to R.5.11.267.

R.5.11.249 Any charge that a Regulated Person may decide to impose on a Client arising from the Client's default shall be no greater than is necessary to compensate the Regulated Person for the costs it has incurred as a result of the said default.

- R.5.11.250 For the avoidance of doubt, the parties to a Credit Agreement are not prevented from expressly agreeing that the return or transfer to the Regulated Person of the security, or proceeds from the sale of the security, is sufficient to repay the credit.
- R.5.11.251 Where the price obtained for the secured immovable property affects the amount owed by the Client under the Credit Agreement, the Regulated Person shall ensure, as far as is reasonably practicable, that the secured immovable property is sold at the best price reasonably obtainable.
- R.5.11.252 Where, after foreclosure proceedings, an outstanding debt remains, the Regulated Person shall, for the purposes of ensuring the protection of the Client, adopt measures aimed to facilitate repayment of the outstanding debt by the Client.
- R.5.11.253 In relation to R.5.11.248, Regulated Persons shall ensure that they have adequate policies and procedures so that they make efforts to exercise, where appropriate, reasonable forbearance before enforcement proceedings are initiated.
- R.5.11.254 The Regulated Person should take into account the individual circumstances of the Client, the Client's interests and rights and their ability to repay when deciding on which Forbearance Measures to take.
- R.5.11.255 The Forbearance Measures referred to in R.5.11.254 may include one or both of the following concessions to the Client:
- a. A total or partial refinancing of a Credit Agreement;
  - b. A modification of the previous terms and conditions of a Credit Agreement, which may include among others:
    - i. extending the term of the mortgage;
    - ii. changing the type of the mortgage (such as, changing the type of mortgage from a capital and interest mortgage to an interest only mortgage);
    - iii. deferring payment of all or part of the instalment repayment for a period;
    - iv. changing the interest rate;
    - v. offering a payment holiday;
    - vi. partial repayments;
    - vii. currency conversions; and
    - viii. partial forgiveness and debt consolidation.
- R.5.11.256 In the event of an assignment to a third party of the Regulated Person's rights under a Credit Agreement, or of the Credit Agreement itself, the

Client shall be entitled to plead against the assignee any defence which was available to the Client as against the original Regulated Person, including set-off where the latter is permitted.

- R.5.11.257 The Client shall be informed of an assignment referred to in R.5.11.256, except where the original Regulated Person, by agreement with the assignee, continues to service the credit vis-à-vis the Client.
- R.5.11.258 When deciding on which Forbearance Measures to take, Regulated Persons should take into account the interests of Clients and comply with consumer protection requirements. Regulated Persons should monitor the efficiency and effectiveness of Forbearance Measures.
- R.5.11.259 Clients may request modifications in the contractual conditions of their Credit Agreements without facing or being about to face difficulties in meeting their financial commitments. Regulated Persons should perform an assessment of the Client's financial situation when such modifications to contractual conditions have an impact on payment performance.
- R.5.11.260 The contractual terms for any Forbearance Measure should ensure that the Regulated Person has the right to review the agreed Forbearance Measures if the situation of the Client improves and more favourable conditions for the Regulated Person (with regard to the forbearance or the original contractual conditions) can therefore be enforced. To this end, the contract should indicate the specific changes to the Forbearance Measure to be applied as a consequence of specific improvements in the situation of the Client. Regulated Persons should also consider including strict consequences, such as a requirement for additional collateral, in the contractual terms for Clients who fail to comply with the forbearance agreement.
- R.5.11.261 Regulated Persons should distinguish between viable Forbearance Measures contributing to reducing the Clients' exposure and non-viable Forbearance Measures, with the aim of safeguarding the interest of Clients as much as possible to help them return to a sustainable financial position and performing repayment status.
- R.5.11.262 Regulated Persons should consider the following factors when assessing the viability of Forbearance Measures:
- a. The Regulated Person can demonstrate (based on objectively verifiable evidence) that the Client can afford the forbearance solution, i.e. full repayment is expected.

- b. The resolution of outstanding arrears is fully or mostly addressed and a significant reduction in the Client's balance in the medium to long term is expected.
  - c. In cases where previous Forbearance Measures have been granted, including any previous Forbearance Measures considered in the long run, the Regulated Person should ensure that additional internal controls are implemented to ensure that this subsequent forbearance treatment meets the viability criteria outlined below. These controls should include, at a minimum, that such cases are explicitly brought to the attention of the risk control function *ex ante*. Furthermore, the explicit approval of the relevant senior decision-making body should be sought.
  - d. Forbearance Measures with a short-term time horizon are applied temporarily and the Regulated Person is able to demonstrate, based on objectively verifiable evidence, that the Client has the ability to repay the original or modified amount on a full principal and interest basis commencing from the expiry date of the short-term temporary arrangement.
  - e. The measure does not result in multiple consecutive Forbearance Measures having been granted to the same exposure.
- R.5.11.263 The Regulated Person must not take steps to repossess a Client's movable or immovable property used as security under the Credit Agreement, other than as a last resort after having explored all other possible options.
- R.5.11.264 Pursuant to R.5.11.263, the Regulated Person must not threaten to commence court action in order to pressurise a Client experiencing financial difficulty to pay more than they can reasonably afford.
- R.5.11.265 Pursuant to R.5.11.270, a Regulated Person must not claim the costs of recovering a debt from a Client if it has no contractual right to claim such costs.
- R.5.11.266 Furthermore, a Regulated Person must not cause a Client to believe that the Client is legally liable to pay the costs of recovery or the cost of default where no such obligation exists.
- R.5.11.267 A Regulated Person shall ensure that any amendments in contractual terms and conditions as a result of any Forbearance Measures are put in writing and agreed by the Client.
- R.5.11.268 Regulated Persons shall have adequate policies and procedures so that they make efforts to exercise, where appropriate, reasonable forbearance



before enforcement proceedings are initiated. Such forbearance measures shall take into account, among other elements, the Client's circumstances and may consist of, among other possibilities:

- a. a total or partial refinancing of a credit agreement;
  - b. a modification of the existing terms and conditions of a Credit Agreement, which may include among others:
    - i. extending the term of the Credit Agreement;
    - ii. changing the type of credit agreement;
    - iii. deferring payment of all or part of the instalment repayment for a period;
    - iv. changing the interest rate;
    - v. offering a payment holiday;
    - vi. partial repayments;
    - vii. currency conversions;
- partial forgiveness and debt consolidation.

R.5.11.269 The list of potential forbearance measures set out in R.5.11.268(b) is without prejudice to any other rules set out in national law.

R.5.11.270 Where the Regulated Person is permitted to define and impose charges on the Client arising from the default, those charges shall not be greater than necessary to compensate the Regulated Person for costs it has incurred as a result of the default.

## 11.2 Procedures and NPE Strategy

R.5.11.271 The Regulated Person should establish and keep up to date, procedures to detect, as early as possible, Clients going into payment difficulties that can end up being a non-performing exposure for the Regulated Person.

In general, Regulated Persons should have in place an adequate framework to identify, measure, manage, monitor and mitigate non-performing exposures ('NPEs'), collectively referred to as the Regulated Person's NPE strategy.

In line with the NPE strategy, the Regulated Person should establish and keep up to date policies and procedures for the effective handling of and engagement with Clients in payment difficulties, hereafter referred to as the 'Client Engagement Policy'.

- R.5.11.272 In the development and implementation of their NPE strategies, together with the implementation of their corresponding NPE governance and operations, Regulated Persons should take into account relevant Client protection considerations and requirements and ensure the fair treatment and protection of Clients.
- R.5.11.273 The Client Engagement Policy should ensure that the Regulated Person provides adequate information through websites and other written materials with the intention of supporting Clients in payment difficulties.
- R.5.11.274 Regulated Persons should have in place an appropriate organisational framework relative to their business model which takes into account their risks, including risks stemming from NPEs. Regulated Persons therefore should devote an appropriate and proportionate amount of management attention and resources, including the provision of adequate training for staff dealing with Clients in payment difficulties, to the workout of NPEs and to the internal controls on related processes.
- R.5.11.275 In order to mitigate sufficiently any conflict of interest in managing NPEs, as well as to make good use of dedicated NPE expertise across the organisation, Regulated Persons should establish dedicated NPE workout units (NPE WUs) that are independent from loan origination activities. This separation of duties approach should encompass not only Client relationship activities (e.g. negotiation of forbearance solutions with Clients) but also the decision-making process. In this context, Regulated Persons should consider implementing dedicated decision-making bodies related to NPE workout (e.g. an NPE committee).
- R.5.11.276 Regulated Persons should build up the relevant expertise required for the defined NPE operating model, including the NPE WUs and internal control functions, in line with the provisions of the joint ESMA and EBA Guidelines on the assessment of the suitability of members of the Management Body and key function holders. Staff allocated to key NPE workout tasks should have specific NPE expertise and experience. Regulated Persons should implement adequate and dedicated NPE training, including on consumer protection, and should design staff development plans to build in-house expertise using available talent.

### 11.3 Treatment of Clients with Mental Capacity Limitations

- R.5.11.277 A Regulated Person must suspend the pursuit of recovery of a debt from a Client when:

- a. the Regulated Person has been notified that the Client might not have the mental capacity to make relevant financial decisions about the management of his debt and/or to engage in the debt recovery process at the time; or
- b. the Regulated Person understands or ought reasonably to be aware that the Client lacks mental capacity to make relevant financial decisions about the management of his debt and/or to engage in the debt recovery process at the time.

*G.5.11.14 A Regulated Person should allow a Client, or a person acting on behalf of the Client, a reasonable period of time to provide evidence as to the likely impact of any mental capacity limitation on the Client's ability to engage with the Regulated Person.*

## 11.4 Sound Forbearance Processes

- R.5.11.278 Before granting any Forbearance Measures, Regulated Persons should assess the Client's repayment capacity. This should include an adequate assessment of the Client's financial situation, based on sufficient information and taking into account relevant factors such as the debt-servicing capacity and overall indebtedness of the Client.
- R.5.11.279 Regulated Persons should have adequate policies and procedures in place with a range of sustainable and effective solutions for the Client when granting forbearance. The grouping of exposures into portfolios should be reflected in these policies and procedures, to enable Regulated Persons to adopt different Forbearance Measures for different segments of Clients and tailor measures to them.
- R.5.11.280 Forbearance contracts and documentation should include a well-defined Client target schedule, detailing all necessary targets to be achieved by the Client in order to repay the exposure over the course of the contract term. These milestones/targets should be credible, be appropriately conservative and take account of any potential deterioration in the Client's financial situation. The performance of the forborne Client, including the Client's compliance with all agreed targets, should be closely monitored by the Regulated Person's unit responsible for granting the forbearance, at least for the duration of the probation period.
- R.5.11.281 Regulated Persons should adopt adequate mechanisms and procedures, in accordance with Section 8 of the [EBA Guidelines on the Definition of Default](#), for the harmonised implementation of the definition in all

subsidiaries and branches. This will ensure that the identification of NPEs is consistent at entity and banking group levels.

## 11.5 Record Keeping Requirements

- R.5.11.282 The Regulated Person should document the reasons why the option(s) offered to the Client are appropriate for their individual circumstances and should make and retain adequate records of its dealings with the Client in payment difficulties for a reasonable period of time.
- R.5.11.283 The Regulated Person must take reasonable steps to ensure that it maintains accurate and adequate data, including in respect of debt and repayment history, so as to avoid the risk that:
- a. an individual who is not the true Client is pursued for the repayment of a debt; and
  - b. the Client is pursued for an incorrect amount.
- R.5.11.284 Before pursuing a Client for the repayment of a debt, the Regulated Person must take reasonable steps to verify the accuracy and adequacy of the available data so as to ensure that the true Client is pursued for the debt and that they are pursued for the correct amount.
- G.5.11.15 A Regulated Person should ensure (subject to any legal requirements) that adequate and accurate information it holds about a Client in relation to a debt, is made available to Credit Intermediaries where relevant.*
- Information relating to the Client which should be made available to any Credit Intermediaries or employees includes, for example:*
- a. being in financial difficulties;*
  - b. being particularly vulnerable;*
  - c. disputing the debt;*
  - d. a repayment plan or forbearance being in place;*
  - e. having a representative acting on the Client's behalf.*

## 11.6 Settlements and Disputed Debt

- R.5.11.285 A Regulated Person must suspend any steps it takes, or where relevant, that a Credit Intermediary takes on its behalf, in the recovery of a debt from a Client where the Client disputes the debt on valid grounds or what may be valid grounds.

- G.5.11.16 Valid grounds for disputing a debt include that:*
- a. the individual being pursued for the debt is not the true Client under the Credit Agreement in question; or*
  - b. the debt does not exist; or*
  - c. the amount of the debt being pursued is incorrect.*
- R.5.11.286 Where a Client disputes a debt on valid grounds or what may be valid grounds, the Regulated Person must investigate the dispute and provide details of the debt to the Client in a timely manner.
- R.5.11.287 Where there is a dispute as to the identity of the Client or as to the amount of the debt, it is for the Regulated Person (and not the Client) to establish, as the case may be, that the Client is the correct person in relation to the debt or that the amount is the correct amount owed under the Credit Agreement.
- R.5.11.288 A Regulated Person must provide a Client with information on the outcome of its investigations into a debt which the Client disputed on valid grounds.
- G.5.11.17 A debt repayment is deadlocked where the Client has acknowledged his liability for a debt and has proposed a repayment plan, but the proposed repayment plan is not acceptable to the Regulated Person seeking to recover the debt.*
- R.5.11.289 A Regulated Person must give due consideration to a reasonable offer of repayment made by the Client.
- R.5.11.290 Where a Regulated Person rejects a proposal for repayment from a Client in financial difficulties, the Regulated Person's response must include a clear explanation of the reason for the rejection.
- R.5.11.291 If a Regulated Person rejects a repayment offer because it is unacceptable, the Regulated Person must not engage in any conduct intended to, or likely to, have the effect of intimidating the Client into increasing the offer.
- G.5.11.18 Examples of conduct that may contravene R.5.11.291 would, depending on the circumstances, include where, following an unacceptable offer, a Regulated Person immediately:*
- a. send representatives to visit the Client or communicates to the Client that it will do so;*

*b. substantially increases the rate of interest or imposes a substantial charge or communicates that it will do either of those things.*

R.5.11.292 If a Regulated Person accepts a Client's offer to settle a debt, it must communicate formally and unequivocally that the offer accompanied by the relevant payment has been accepted as settlement of the Client's liability.

## Section 12: Tying and Bundling Practices

### 12.1 Credit Agreements relating to Residential Immovable Property

R.5.12.293 For the purposes of Credit Agreements relating to residential immovable property for Clients, whilst Bundling Practices shall be allowed, Tying Practices shall be prohibited.

R.5.12.294 Notwithstanding R.5.12.293, Regulated Persons can request the Client or a family member or close relation of the Client to open or maintain a Payment or a Deposit Account, where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for the Regulated Person in the event of default.

R.5.12.295 Regulated Persons may require the Client to hold a relevant insurance policy related to the Credit Agreement provided that a Regulated Person shall accept insurance policies from a supplier different to his preferred supplier where such policy has a level of guarantee equivalent to the one the Regulated Person has proposed.

### 12.2 Payment Accounts

R.5.12.296 Where a Payment Account is offered as part of a package with another product or service which is not linked to a Payment Account, the Regulated Person shall inform the Client whether it is possible to purchase the Payment Account separately from such other product or service.

- R.5.12.297 Where a Regulated Person informs the Client in accordance with R.5.12.296 that it is possible to purchase the Payment Account separately, the Regulated Person shall additionally provide the Client with separate information regarding the costs and fees associated with each of the other products and services offered in the package that can be purchased separately.
- R.5.12.298 Where the Regulated Person does not offer such other products and services separately from the Payment Account, the Regulated Person may unbundle any of such products and services from the package. In such case, the Regulated Person shall provide separate information, including any applicable costs and fees, on the Payment Account as well as on the packaged Payment Account.

## Section 13: Complaints Handling Mechanisms

- R.5.13.299 Regulated Persons shall ensure that a Complaint Management Policy is put in place and set out in a written document. This policy shall be defined and endorsed by the Regulated Person's Management Body, who shall also be responsible for its implementation and for monitoring compliance with it. The Complaint Management Policy shall be made available to all relevant Staff of the Regulated Person through an adequate internal channel.
- R.5.13.300 A Regulated Person's Complaint Management Policy should include processes for:
- a. lodging a Complaint with the Regulated Person by any reasonable means (including Complaints submitted by an authorised representative such as a family member or a lawyer) and confirmation that this is free of charge;
  - b. handling Complaints received, including deadlines;
  - c. the fair treatment of Complainants;
  - d. the proper treatment of a Complainant's information and personal data, according to the applicable legal framework;
  - e. preventing, identifying and managing possible situations of conflicts of interest in Complaints management;
  - f. the prompt, equal, fair and efficient management of Complaints;
  - g. the adequate training of Staff participating in Complaints handling within the Regulated Person;
  - h. internal reporting, follow up and monitoring of compliance with the Complaints Management Policy;



- i. the internal Complaints-handling procedures of the Regulated Person should be made available to Clients upon request at all time and free of charge.
- j. Record-keeping clauses.

R.5.13.301 Regulated Persons shall have in place a Complaints management function which enables them to investigate Complaints fairly and to identify or mitigate any possible conflicts of interest. Subject to the proportionality principle, it is advisable that the compliance function and the Complaints management function are properly separated.

However, in those cases where the compliance function also acts as the Regulated Person's Complaints management function, the compliance report shall address any issues arising out of the implementation of the relevant arrangements the Regulated Person has in place to assess, minimise and manage any conflicts of interest between the said two functions, including in particular, any failure identified as regards to the Regulated Person's compliance with its Complaints handling obligations.

R.5.13.302 Regulated Persons shall inform the MFSA of the identity and contact details of the individual/s involved in the Complaints management function as referred to in R.5.13.301 and any changes thereto.

*G.5.13.19 Irrespective of the governance structure that a Regulated Person may have adopted for Complaints handling, it is considered best practice for a Regulated Person to:*

- a. appoint one or more senior manager(s) with overall regulatory responsibility for the Complaints management function or process, as appropriate;*
- b. ensure the necessary internal flows of information and reporting lines for Complaints management, as appropriate, reaching the second and third lines of defence, bank committees and the Board of Directors; and*
- c. control the effective and efficient treatment of Complaints.*

R.5.13.303 Regulated Persons shall register any Complaints it receives in an appropriate manner, (for example through a secure electronic register) as soon as these are received together with any action taken and follow-up with respect to such Complaints. The MFSA may at any time require the register to be produced for its review.

*G.5.13.20 In such a register referred to in R.5.13.303, Regulated Persons are recommended to include for each Complaint the date on which it was received and the date on which it was resolved.*

- R.5.13.304 Without prejudice to the provisions of the [Data Protection Act \(Cap. 586\)](#), the [General Data Protection Regulation \(EU\) 2016/679](#) and any applicable provisions of Maltese Law relating to record keeping, it is considered best practice for:
- a. the register of Complaints held by a Regulated Person to contain all the necessary information on the Complaints, including;
    - i. the subject of the Complaint;
    - ii. data on the Complainant;
    - iii. the date of receiving and answering the Complaint;
    - iv. whether the Complaint was resolved or is still open, including the date when the Complaint was resolved where applicable;
    - v. the result/outcome of the Complaints handling procedure; and
    - vi. the class of business or Retail Product or Service, as applicable to which the Complaint relates;
  - b. documentation relating to the Complaint to be kept and archived in a secure manner for a reasonable period of time based on the nature of the Complaint; and
  - c. a Regulated Person to provide information to Complainants regarding their Complaint, where reasonably requested by Complainants.

- R.5.13.305 Regulated Persons 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.

In this respect, the Regulated Person shall grant to the compliance function access to all the Client Complaints it receives and shall also ensure that its compliance function:

- a. has a role in monitoring the operation of the Complaints process; and
  - b. considers Complaints as a source of relevant information in the context of the said function's general monitoring responsibilities. For the avoidance of doubt, this does not require the compliance function to have a role in determining the outcome of Complaints.
- R.5.13.306 Regulated Persons shall carry out the above analysis 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 processes or products, including those not directly complained of; and
  - c. correcting, where reasonable to do so, such root causes.

- G.5.13.21 A Regulated Person should 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 Retail Products and Services 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 processes or products;*
- d. a process for deciding whether root causes discovered should be corrected and how this should be done; and*
- e. regular reporting or information on recurring problems to senior management.*

R.5.13.307 Regulated Persons shall:

- a. on request or when acknowledging receipt of a Complaint, provide written information regarding their 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 (for example, the type of information to be provided by the Complainant, the identity and contact details of the person or department to whom the Complaint should be directed, etc.); and
  - ii. the process that will be followed when handling a Complaint (for example, when the Complaint will be acknowledged, an indication of handling timelines and the availability of an authority, an ombudsman or alternative dispute resolution fora including Complaints with the [Arbiter for Financial Services Act \(Cap.555\)](#), etc.);
- d. keep the Complainant informed about further handling of the Complaint;
- e. provide clear information on the language in which the Complaint may be submitted to the Regulated Person, which languages shall at least include the options of the English and Maltese languages.

R.5.13.308 Regulated Persons shall:

- a. within two working days, acknowledge receipt in writing of any Complaint;
- b. where a Complaint is made orally, the Regulated Person shall make a summary of the Complaint in writing 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 before taking a final decision;
- d. communicate in writing and in plain language which is clearly understood;

- e. following the acknowledgement of receipt of a Complaint in accordance with indents (a) and (b), the concerned Regulated Person shall also provide the Complainant in writing with confirmation of the following:
  - i. that the Regulated Person shall investigate the Complaint;
  - ii. that the Regulated Person shall, upon completion of the investigation and without unnecessary delay but within fifteen working days from the date of receipt of the Complaint, inform the Complainant in writing about the outcome of the investigation and describing its proposed course of action; and
  - iii. if the investigation is not completed, or is envisaged not to be completed, within fifteen working days from the date of receipt of the Complaint, the Regulated Person shall inform the Complainant of such fact before the end of this period, including reasons for the causes of the delay, provide an indication as to when the investigation is likely to be completed and inform the Complainant that if the Complainant is not satisfied with the progress of the investigation, the matter may be referred by the Complainant to other alternative dispute resolution fora including Complaints with the Arbiter for Financial Services under the [Arbiter for Financial Services Act \(Cap.555\)](#).

R.5.13.309 When providing a final decision in terms of R.5.13.308(e) that does not fully satisfy the Complainant's demand, the Regulated Person shall provide to the extent possible and in writing, a thorough explanation of the Regulated Person's position on the Complaint and that if the Complainant is not satisfied with the way the Complaint was resolved by the Regulated Person, the Complainant may refer the Complaint to the Office of the Arbiter for Financial Services established under the [Arbiter for Financial Services Act \(Cap.555\)](#). Such final decision by the Regulated Person shall be provided in writing.

R.5.13.310 Any form of communication in terms of the rules above shall be communicated to the complainant clearly and in writing.

R.5.13.311 Regulated Persons 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, differentiated as appropriate by product, as applicable and the cause of the Complaint.

R.5.13.312 Without prejudice to R.5.13.311 above, where a Complaint has been lodged with the Office of the Arbiter for Financial Services and the case has been decided, the Regulated Person shall immediately provide the

MFSA with a copy of the Arbiter's final decision. The Regulated Person 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 Regulated Person itself, in terms of the [Arbiter for Financial Services Act \(Cap.555\)](#), and once such appeal has been decided of, the final decision of the Court.

- R.5.13.313 Regulated Persons shall ensure that, when handling Complaints in terms of the rules outlined in this section, they shall abide with any data protection laws including the [Data Protection Act \(Cap. 586\)](#) and the [Processing of Personal Data \(Electronic Communications Sector\) Regulations \(S.L. 586.01\)](#).

## Annex I – Customer Charter for opening Payment Accounts and setting up Credit Facilities

This annex provides a minimum checklist of key characteristics that Regulated Persons need to include in their Customer Charter in accordance with this Rulebook, depending on the Retail Product type on offer.

### Opening Payment Accounts

<b>Product Feature Requirement</b>	<b>Payment Account</b>	<b>Fixed Term Deposit Account</b>
Minimum initial balance required for Payment Account product setup	✓	✓
Fees and charges split into one-time fees and periodic ongoing charges (e.g. per transaction)	✓	✓
Daily limits on transaction amounts	✓	-
Option for any overdraft facility accompanying the Product	✓	-
Respective interest rates earned/charged on either credit or debit balances	✓	✓
Initial onboarding KYC documentation required from Clients	✓	✓
Nature and extent of ongoing KYC monitoring requests from Clients	✓	-
Availability of managing the Payment Account product through internet banking	✓	✓
Availability of managing the Payment Account product through mobile banking	✓	✓
Availability of issuing debit cards linked to the Product	✓	-
Availability of issuing cheque books linked to the Product	✓	-
Duration of the term of the product	-	✓
Action to be taken by the Regulated Person upon maturity of the product	-	✓

## Setting up Credit Facilities

<b>Product Requirement</b>	<b>Feature</b>	<b>Credit Agreements for Consumer Credit</b>	<b>Credit Agreements on Immovable Property</b>
Onboarding documentation from Client	KYC required	✓	✓
Applicable range of loan amount available		✓	✓
Requirement for any down payments		✓	✓
Requirement for collateral against the credit facility		✓	✓
Repayment terms, depending on the value of collateral		✓	✓
Applicable interest rates		✓	✓
Annual Percentage Rate of Charge (APRC)		✓	✓
Other applicable fees and charges		✓	✓
Debt-to-Income ratio		✓	✓
Loan-to-Value ratio		-	✓
Explanation of the loan application process, including the purpose of the loan		✓	✓
Immovable property details and characteristics impacting the loan amount		-	✓
Appraisal and inspection reports carried out on the immovable property		-	✓



## Annex II – Credit-granting Criteria

This annex provides a set of criteria to be considered in the design and documentation of credit-granting criteria, in accordance with this Rulebook.

### Lending to Individual Clients

1. Customer acceptance criteria, i.e. customer type, customer age limits, customer credit record
2. Definition of acceptable income
3. Minimum requirements for collateral
4. Minimum requirements for guarantees
5. Maximum loan amounts
6. Maximum loan maturities
7. Amortisation requirements (including interest rate type for the loans)
8. Risk-based limits (concentration, type of product, etc.)
9. Acceptable loan-to-value ratio limits (for secured lending)
10. Acceptable loan-to-income ratio limits
11. Acceptable debt-to-income ratio limits
12. Acceptable income-to-total-credit-obligation ratio limits (including for gross income, income after taxes and premiums, income after financial expenses, income after regular other expenses)
13. Acceptable maximum size of loan to repayment capacity
14. Compliance policy with macroprudential requirements, when relevant

### Lending to Clients in the form of Micro-Enterprises

1. Customer acceptance criteria, i.e. for specific PDs, external ratings, customer types, track record, etc.
2. Minimum requirements for revenues, cash flow and financial projections
3. Minimum requirements for collateral
4. Minimum requirements for guarantees and credit enhancements
5. Minimum requirements for acceptable covenants

6. Requirements for the drawdown of the loan to the borrower
7. Maximum loan amounts
8. Appropriate limits on partial recourse or non-recourse loans
9. Maximum loan maturities
10. Amortisation schedules and standards for the acceptability of and limits on non-amortising loans and on the use of interest reserves and cash sweep structures
11. Risk-based limits (towards concentration, type of product, etc.)
12. Acceptable loan-to-value ratio limits (for secured lending)
13. Acceptable debt-servicing coverage ratio limits
14. Acceptable interest coverage ratio limits
15. Acceptable EBITDA limits
16. Acceptable leverage ratio limits
17. Acceptable debt-to-equity ratio limits
18. Acceptable loan-to-cost ratio limits
19. Acceptable cash-flow-to-debt-service ratio limits
20. Acceptable return on equity ratio limits
21. Acceptable capitalisation rate (net operating income/market value) limits
22. Standards to address and mitigate risks associated with environmental risk
23. Compliance policy with macroprudential requirements, when relevant

## Annex III – Metrics for Credit Granting and Monitoring

This Annex provides a set of credit-specific metrics to be considered by Regulated Persons when performing creditworthiness assessments and credit risk monitoring, in accordance with this Rulebook. Where relevant and more appropriate, Regulated Persons may use other metrics for that purpose.

### Lending to Individual Clients

1. Loan to income
2. Loan service to income
3. Debt to income
4. Debt service to income
5. Loan To Value (LTV)

### Lending to Clients in the form of Micro-Enterprises

1. Equity ratio (shareholders' equity divided by total assets)
2. (Long-term) debt-to-equity ratio
3. EBITDA (Earnings Before Interest, Taxation, Depreciation and Amortization)
4. Debt yield (net operating income / loan amount)
5. Interest bearing debt/EBITDA
6. Enterprise value (sum of market value of common stock, market value of preferred equity, market value of debt, minority interest, less cash and investments)
7. Capitalisation rate (net operating income/market value)
8. Asset quality
9. Total debt service coverage ratio (EBITDA) over total debt service
10. Cash debt coverage ratio (net cash provided by operating activities over the average current liabilities of the company within a certain period of time)
11. Coverage ratio (total current assets divided by total short-term debt)
12. Future cash flow analysis
13. Return on assets
14. Debt service
15. Loan to Cost (LTC)
16. Interest coverage ratio
17. Return on equity ratio (net income after interest and tax over average shareholders' equity)
18. Return on capital employed

- 19. Net profit margin
- 20. Turnover evolution

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## Annex IV – Possible Forbearance Measures

Forbearance measure	Description	Viability and other important considerations
1. Interest only	During a defined short-term period, only interest is paid on credit facilities and no principal repayment is made. The principal amount thus remains unchanged and the terms for the repayment structure are reassessed at the end of the interest-only period, subject to the assessed repayment ability.	<p>This measure should be considered viable only if the credit institution can demonstrate (based on reasonable documented financial information) that the financial difficulties experienced by the borrower are of a temporary nature and that after the defined interest-only period the borrower will be able to service the loan at least to the extent of the previous repayment ability.</p> <p>The measure should generally not exceed a period of 24 months and, in the case of construction of commercial property and project finance, 12 months.</p> <p>Once the defined period of this forbearance measure is over, institutions should reassess the borrower's debt-servicing capacity in order to proceed with a revised repayment schedule that is able to account for the unpaid capital element during this interest-only period.</p> <p>In most cases, this measure will be offered in combination with other measures of a longer-term nature to compensate for the temporary lower repayments (e.g. extension of maturity).</p>
2. Reduced payments	Decrease in the amount of repayment instalments over a defined short-term period in order to accommodate the borrower's affected cash flow situation, before continuing with the repayments on the basis of projected repayment ability. The interest remains to be paid in full.	<p>See '1. Interest only'.</p> <p>If the amount of the payment reduction is moderate and all other conditions mentioned above are met, this measure could be applied for a period longer than 24 months.</p>
3. Grace period/payment moratorium	An agreement allowing the borrower a defined delay in fulfilling the repayment	See '1. Interest only.'

Forbearance measure	Description	Viability and other important considerations
4. Arrears/interest capitalisation	<p>obligations, usually with regard to the principal and interest.</p> <p>Forbearance of arrears and/or accrued interest arrears by the addition of those unpaid amounts to the outstanding principal balance for repayment under a sustainable rescheduled programme.</p>	<p>The measure should be granted/considered viable only where the institution has assessed that the borrower's verified income/expenditure levels (based on reasonable documented financial information) and the proposed revised repayments are sufficient to enable the borrower to service the revised loan repayment on a principal and interest basis for the duration of the revised repayment schedule, and where the institution has formally sought confirmation that the borrower understands and accepts the capitalisation conditions.</p> <p>Arrears capitalisation should be provided only selectively in cases where the recovery of historical arrears or payments due under the contract is not possible and capitalisation is the only option realistically available.</p> <p>Institutions should generally avoid offering this measure to a borrower more than once, and the measure should be applied only to arrears that do not exceed a predefined size relative to the overall principal (which should be defined in the credit institution's forbearance policy).</p> <p>The institution should assess the percentage of arrears being capitalised compared with the principal and interest repayments as adequate and appropriate for the borrower.</p>
5. Interest rate reduction	<p>Permanent (or temporary) reduction in interest rate (fixed or variable) to a fair and sustainable rate.</p>	<p>Exposures with high interest rates are one of the common causes of financial distress. The financial difficulties of a borrower may partly derive from the fact that the interest rates are excessively high compared with the income of the borrower or from the fact that the evolution of interest rates, as opposed to a fixed rate, has resulted in the borrower receiving finance at an exorbitant cost, compared with prevailing market conditions. In such cases, an interest rate reduction could be considered.</p>

Forbearance measure	Description	Viability and other important considerations
6. Extension of maturity/term	Extension of the maturity of the loan (i.e. of the last contractual loan instalment date), which allows a reduction in instalment amounts by spreading the repayments over a longer period.	<p>If affordability can be achieved only at below-risk or below-cost rates, this should be clearly flagged.</p> <p>This measure could be applied also as a short-term measure.</p>
7. Additional collateral	Additional liens on unencumbered assets are obtained as additional collateral from the borrower in order to compensate for the higher risk exposure and as part of the restructuring process.	<p>This measure is not a viable standalone forbearance measure as it does not in itself resolve the presence of arrears on a loan. It usually aims to improve or cure LTV ratio covenants.</p> <p>Additional collateral may take many forms, such as a pledge on a cash deposit, assignment of receivables or a new/additional mortgage on immovable property.</p> <p>Institutions should value second and third liens on assets as well as personal guarantees with care.</p>
8. Sale by agreement/assisted sale	The credit institution and the borrower agree to voluntarily dispose of the secured asset(s) to partially or fully repay the debt.	<p>Credit institutions should restructure any residual debt post the assisted sale with an appropriate repayment schedule in line with the borrower's reassessed repayment ability.</p> <p>For forbearance measures that may require the sale of the property at the end of the term, credit institutions should conservatively consider the future approach to any shortfall that could remain after the sale of the property and address it as early as possible.</p> <p>For exposures that are repaid by repossession of collateral at a predefined moment, the repossession does not</p>



Forbearance measure	Description	Viability and other important considerations
9. Rescheduled payments	The existing contractual repayment schedule is adjusted to a new sustainable repayment programme based on a credible, current and forecasted assessment of the borrower's cash flow	<p>constitute a forbearance measure unless it is exercised ahead of the predefined moment due to financial difficulties.</p> <p>Different repayment options may include:</p> <ul style="list-style-type: none"> <li>i. Partial repayment: when a payment is made against the exposure, for example from a sale of assets that is lower than the outstanding balance. This option is applied to significantly reduce the exposure at risk and to enable a sustainable repayment programme for the remaining outstanding amount. This option should be preferred to the bullet and step-up options described below.</li> <li>ii. Balloon or bullet payments: when the rescheduled repayment ensures a large payment of the principal at a later date before loan maturity. This option should be used/considered viable only in exceptional circumstances and when the institution can duly demonstrate future cash flow availability by the borrower to meet the balloon or bullet payment.</li> <li>iii. Step-up payments: credit institutions should consider a solution including this option viable only when they can ensure, and are able to demonstrate, that there is good reason to expect that future increases in payments can be met by the borrower.</li> </ul>
10. Conversion of currency	When the currency of the exposure is aligned with the currency of the cash flow.	Credit institutions should explain fully to borrowers the risks of foreign exchange and should also refer to currency conversion insurance.
11. Other alteration of contract conditions/covenants	When the credit institution discharges the borrower of covenants or conditions included in a loan agreement not listed above.	
12. Refinancing/new credit facilities	Providing new financing arrangements in order to support the recovery of a distressed borrower.	This is usually not a viable standalone forbearance measure; it should be combined with other forbearance measures addressing existing arrears. It should be applied only in exceptional cases.

Forbearance measure	Description	Viability and other important considerations
13. Debt consolidation	Combining multiple exposures into a single exposure or a limited number of exposures.	<p>New credit facilities may be granted that may entail the pledging of additional collateral. In the case of inter-creditor arrangements, the introduction of covenants may be necessary to compensate for the additional risk incurred by the credit institution.</p> <p>This measure may be more suitable for corporate exposures; a thorough assessment of the borrower's ability to pay should be performed, including sufficient involvement of independent sectoral experts to judge the viability of business plans and cash flow projections provided. This measure should be considered viable only when the thorough affordability assessment demonstrates repayment capacity in full.</p> <p>This is usually not a viable standalone forbearance measure; it should be combined with other forbearance measures addressing existing arrears.</p> <p>This measure is particularly beneficial in situations where combining collateral and secured cash flow provides greater overall collateral coverage for the entire debt, for example, by minimising cash leaks or by facilitating reallocation of cash flow surplus between exposures.</p>
14. Partial or total debt forgiveness	The credit institution forfeits the right to legally recover part or the whole of the amount of the debt outstanding from the borrower.	<p>This measure should be used where the credit institution agrees to a 'reduced payment in full and final settlement' whereby the credit institution will forgive all of the remaining debt if the borrower repays the reduced amount of the principal balance within an agreed timeframe.</p> <p>Credit institutions should apply debt forgiveness options carefully, since the possibility of forgiveness can give rise to moral hazard and thus might encourage 'strategic defaults'. Therefore, institutions should define specific forgiveness policies and procedures to ensure strong controls are in place.</p>

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