

01 August 2024

## Circular on the Publication of the Credit Servicers and Credit Purchasers Act and Other Relevant Legal Instruments

The Malta Financial Services Authority (the 'Authority') is hereby informing the industry of the publication of the following legal instruments, which transpose and implement into local legislation Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU (the 'NPL Directive'):

- Credit Servicers and Credit Purchasers Act (the 'Act'), published by virtue of [Act No. XXXII of 2024](#),
- Credit Servicers and Credit Purchasers Act (Passporting) Regulations (the 'Passporting Regulations'), issued under the Act and published by virtue of [L.N. 172 of 2024](#), and
- Conduct of Business Rules on Credit Servicing and Borrower Protection, issued under the Act.

The NPL Directive is aimed at addressing the accumulation of non-performing loans on credit institutions' balance sheets and reduce the risk of future accumulation thereof. This is achieved through the harmonisation of rules for credit servicers and credit purchasers, in a manner that supports the development of a secondary market for non-performing loans in the European Union. The publication of the above-mentioned legal instruments implements such framework locally.

### Credit Servicers and Credit Purchasers Act

The Act transposes the majority of the provisions of the NPL Directive. In brief, the Act:

- outlines the purpose of the Act itself, lists definitions and terminology, defines the scope of applicability,
- outlines the authorisation requirements to apply for a credit servicer licence, and the supervisory requirements thereafter,

- sets obligations on credit purchasers,
- defines the powers and obligations of the National Competent Authority, along with cooperation and exchange of information with other competent authorities, and
- sets penalties, remedial measures and appeals procedure.

The Act also implements a number of options and national discretions, as outlined in the NPL Directive:

- the ability for credit servicers to receive and hold funds in terms of Article 6(1) of the NPL Directive,
- the extension of the application of Article 17(1) of the NPL Directive to “other credit agreements”, and
- the possible requirement by the National Competent Authority for the credit servicer to comply, on behalf of the credit purchaser, with the obligations imposed on the credit purchaser, in terms of Article 17(5) of the NPL Directive.

### Credit Servicers and Credit Purchasers Act (Passporting) Regulations

The purpose of the Passporting Regulations is to transpose Articles 13 and 14 of the NPL Directive thereby establishing the right for credit servicers authorised in another EU Member State to act as such in Malta, and the right for credit servicers authorised in Malta to do the same in any other EU Member State. These provisions are also aimed at ensuring that all regulatory authorities concerned are notified and involved, as needed.

### Conduct of Business Rules on Credit Servicing and Borrower Protection

One of the main objectives of the NPL Directive is to lay down safeguards for the transfer of non-performing loans by credit institutions to credit purchasers, whilst at the same time safeguarding the borrower’s rights. Therefore, it follows that certain provisions of the NPL Directive, which lay down specific conduct-related requirements, are being transposed and implemented by means of new Conduct of Business Rules on Credit Servicing and Borrower Protection which are being issued under the new Act. These new Rules have been divided into two Chapters: Chapter 1 on Conduct Requirements on Credit Servicing and Chapter 2 on Requirements for Borrower Protection.

In particular, the said Conduct of Business Rules implement the following specific Articles of the NPL Directive:

- Article 10 on the relationship with the borrower, communication of the transfer and subsequent communication,
- Article 11 on the contractual relationship between a credit servicer and a credit purchaser,
- Article 24(1) and (2) on complaints, and
- Article 5(1)(f) and (g), which are being reflected as ongoing requirements. These relate, respectively, to the establishment of an appropriate policy by the credit servicer ensuring compliance with rules for the protection and the fair and diligent treatment of borrowers; as well as the establishment of internal procedures by the credit servicer for ensuring adequate recording and handling of complaints from borrowers.
- Moreover, where considered necessary, new *“guidelines”* have been introduced within the Conduct Rules, inspired from relevant recitals of the NPL Directive, in order to supplement and clarify further the main requirements referred to above.

In addition to the above, the Authority is hereby informing the industry of the publication of the following legal instruments, issued under the Act:

- Credit Servicers and Credit Purchasers Act (Fees) Regulations (the ‘Fees Regulations’), published by virtue of [L.N. 173 of 2024](#), and
- Credit Servicers Rule CSR/01 on Application Procedures and Requirements for the Authorisation of Credit Servicers (the ‘Rule’).

### Credit Servicers and Credit Purchasers Act (Fees) Regulations

The Fees Regulations complement the Credit Servicers Framework by establishing the fees and related procedures for Credit Servicers conducting their services in Malta. In this regard, they establish the application fee and annual supervisory fee payable by Credit Servicers authorised under the Act, and the notification fee and annual supervisory fee payable by Credit Servicers authorised in other EU Member States and acting as credit servicers in Malta through the establishment of the branch.

The User Guidelines in relation to the Fees Regulations are also being published on the [MFSA Website](#).

## Credit Servicers Rule on Application Procedures and Requirements for the Authorisation of Credit Servicers

The Rule complements the overall framework by establishing more detailed authorisation requirements and processes for prospective applicants of a credit servicer licence. The Rule includes the following elements, amongst others:

- requirements prior to submitting an application to the Authority,
- reference for prospective applicants to be guided by the MFSA Authorisation Process Charter,
- details on documentation to be submitted with an application, including on the ownership and management of applicants,
- implementation of the EBA Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers (EBA/GL/2023/09), and
- process timelines and potential outcomes for the determination of an application.

The *Conduct of Business Rules on Credit Servicing and Borrower Protection* and the *Credit Servicers Rule on Application Procedures and Requirements for the Authorisation of Credit Servicers* have been published in the area dedicated to this framework on the [MFSA website](https://www.mfsa.mt).

All legal instruments referred to in this circular are applicable as from date of publication.

*Disclaimer: The content of this Circular shall only be considered for information purposes. It should not be construed as advice and should not be treated as such.*