

**CONDUCT OF BUSINESS RULES  
CREDIT SERVICING AND BORROWER  
PROTECTION**

**ISSUED 1 AUGUST 2024**

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## REVISIONS LOG

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VERSION	DATE ISSUED	DETAILS
1.00	1 August 2024	Issued

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## INTRODUCTION

These Rules are being issued in terms of the [Credit Servicers and Credit Purchasers Act, 2024](#) (Chapter 645 of the Laws of Malta), (hereinafter referred to as “**the Act**”) which implements [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, as may be amended from time to time, (the “**NPL Directive**”).

The primary aim of the NPL Directive is to enhance and foster the development of secondary markets for Non-Performing Credit Agreements originally granted by credit institutions in the European Union by reducing impediments to, and laying down safeguards for, the transfer of Non-Performing Credit Agreements by Credit Institutions to Credit Purchasers, whilst at the same time ensuring further strengthened protection of Borrowers rights, in particular of Consumers.

## APPLICATION

The Rules essentially implement certain provisions of the NPL Directive, in particular those which are considered relevant from a borrower protection perspective.

These Rules shall also be read and construed together with:

- (a) the Act and any Credit Servicer Rules issued thereunder;
- (b) any technical standards issued under the NPL Directive; and
- (c) any relevant Guidelines issued by the European Banking Authority.

## GLOSSARY

The terms used within these Rules, and not defined herein, are to be construed within the meaning of the Act and the NPL Directive.

<b>Borrower</b>	Means a legal or natural person who has concluded a Credit Agreement with a Credit Institution, including its legal successor or assignee.
<b>Consumer</b>	Means a natural person who, in Credit Agreements covered by the NPL Directive, is acting for purposes which are outside his trade, business or profession.
<b>Credit Agreement</b>	Means an agreement as originally issued, modified or replaced, whereby a Credit Institution grants a credit in the form of a deferred payment, a loan or other similar financial accommodation.
<b>Credit Institution</b>	Means a Credit Institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013, that is the Capital Requirements Regulation (the "CRR").
<b>Creditor</b>	Means a Credit Institution that has issued a credit, or a Credit Purchaser.
<b>Credit Purchaser</b>	Means any natural or legal person, other than a Credit Institution, that purchases a Creditor's rights under a Non-performing Credit Agreement, or the Non-Performing Credit Agreement itself, in the course of its trade, business or profession, in accordance with applicable European Union law and national law.  Provided that this term shall be construed to cover also the representative designated in accordance with the relevant article in the Act implementing Article 19 of the NPL Directive, as applicable.
<b>Credit Servicing Agreement</b>	Means a written contract, concluded between a Credit Purchaser and a Credit Servicer concerning the services to be provided by the Credit Servicer on behalf of the Credit Purchaser.

<p><b>Credit Servicer</b></p>	<p>Means a legal person that, in the course of its business, manages and enforces the rights and obligations related to a Creditor's rights under a Non-Performing Credit agreement, or to the Non-Performing Credit Agreement itself, on behalf of a Credit Purchaser, and carries out at least one or more Credit Servicing Activities.</p>
<p><b>Credit Service Provider</b></p>	<p>Means a third party used by a Credit Servicer to perform any of the Credit Servicing Activities.</p>
<p><b>Credit Servicing Activities</b></p>	<p>Means one or more of the following activities:</p> <ul style="list-style-type: none"> <li>(a) collecting or recovering from the Borrower, in accordance with national law, any payments due related to a Creditor's rights under a Credit Agreement or to the Credit Agreement itself;</li> <li>(b) renegotiating with the Borrower, in accordance with national law, any terms and conditions related to a Creditor's rights under a Credit Agreement, or of the Credit Agreement itself, in line with the instructions given by the Credit Purchaser, where the Credit Servicer is not a credit intermediary as defined in Article 3, point (f), of Directive 2008/48/EC (the Consumer Credit Directive) or in Article 4, point (5), of Directive 2014/17/EU (the Mortgage Credit Directive);</li> <li>(c) administering any complaints relating to a Creditor's rights under a Credit Agreement or to the Credit Agreement itself;</li> <li>(d) informing the Borrower of any changes in interest rates or charges or of any payments due related to a Creditor's rights under a Credit Agreement or to the Credit Agreement itself.</li> </ul>

<b>Durable Medium</b>	Means any instrument which: <ul style="list-style-type: none"> <li>(a) enables a Borrower to store information addressed personally to that Borrower in a way accessible for future reference and for a period of time adequate for the purposes of the information; and</li> <li>(b) allows the unchanged reproduction of the information stored.</li> </ul>
<b>MFSA</b>	Means the Malta Financial Services Authority established under the Malta Financial Services Authority Act (Cap. 330).
<b>Non-Performing Credit Agreement</b>	Means a Credit Agreement that is classified as a non-performing exposure in accordance with Article 47a of Regulation (EU) No 575/2013, (the "CRR").
<b>NPL Directive</b>	<a href="#">Directive (EU) 2021/2167</a> 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, as may be amended from time to time.
<b>Regulated Person</b>	Means the entity referred to in Article 2(5), point (a)(i) or (iii) of the NPL Directive, when such an entity is appointed by the Credit Purchaser to perform credit servicing activities on its behalf, which is subject to certain obligations pursuant to the relevant Rules in Chapter 2 of these Conduct of Business Rules which implement Article 10 of the NPL Directive.

## CHAPTER 1 CONDUCT REQUIREMENTS ON CREDIT SERVICING

### CONTRACTUAL RELATIONSHIP BETWEEN A CREDIT PURCHASER AND A CREDIT SERVICER

- R.1.1 A Credit Servicer appointed by a Credit Purchaser (that does not perform itself the Credit Servicing Activities of the Credit Agreements it acquires), shall ensure that it provides its services in respect of the management and enforcement of a Creditor's rights under a Non-Performing Credit Agreement, or of the Non-Performing Credit Agreement itself, on the basis of a written Credit Servicing Agreement entered into between the Credit Purchaser and the appointed Credit Servicer.
- G.1.1 When a Credit Purchaser entrusts to a Credit Servicer the management and enforcement of a Credit Agreement, the Credit Purchaser delegates its rights and duties to the Credit Servicer, while still remaining ultimately responsible. Accordingly, the relationship between the Credit Purchaser and the Credit Servicer should be clearly established in a written Credit Servicing Agreement as referred to in R.1.1 above.
- G.1.2 The Non-Performing Credit Agreement referred to in R.1.1 would cover non-performing credit originally granted by a Credit Institution, which credit might become performing in the process of servicing the credit. In that case, a Credit Servicer should be able to continue carrying out its Credit Servicing Activities.
- R.1.2 The Credit Servicing Agreement referred to in R.1.1 shall provide for and contain, at least, the following:
- (a) a detailed description of Credit Servicing Activities to be carried out by the Credit Servicer;
  - (b) the level of remuneration of the Credit Servicer or how the remuneration is to be calculated;
  - (c) the extent to which the Credit Servicer can represent the Credit Purchaser in relation to the Borrower;
  - (d) an undertaking by the parties to comply with the European Union law and national law applicable to a Creditor's rights under a Credit Agreement, or to the Credit Agreement itself, including in respect of Consumer protection and of data protection;
  - (e) a clause requiring the fair and diligent treatment of the Borrowers;
  - (f) a requirement pursuant to which the appointed Credit Servicer is required to notify the Credit Purchaser prior to outsourcing any of its Credit Servicing Activities.



- G.1.3 In relation to R.1.2(d) reference to European Union law and national law in relation to:
- (a) Consumer protection, would cover, for instance, law which provides for several rights and safeguards related to Credit Agreements granted to a Consumer, which apply, amongst other matters, to the performance or default of the Credit Agreement. Such law aims to ensure a high level of Consumer protection;
  - (b) data protection, would cover, for instance, the fact that the processing of personal data in the context of the Credit Servicing Agreement is to fully comply with the relevant requirements relating to personal data protection).
- G.1.4 A Credit Servicer should, at all times, act fairly and with due consideration for the financial situation of Borrowers. Therefore, in relation to R.1.1 and R.1.2(f), the contractual relationship between the Credit Purchaser and the Credit Servicer, and the obligations of the appointed Credit Servicer towards the Credit Purchaser, should not be altered by the outsourcing of Credit Servicing Activities to Credit Service Providers.
- A Credit Servicer should be responsible for ensuring that the outsourcing of its Credit Servicing Activities to Credit Service Providers does not result in undue operational risk, nor in non-compliance by the Credit Service Provider with any relevant requirements of European Union law or national law, nor restrict the capacity of the MFSA or any other relevant competent authority to perform its duties and safeguard Borrower rights.
- G.1.5 The Credit Purchaser and the Credit Servicer shall comply with the applicable European Union law and national law as relevant to the initial Credit Agreement and shall ensure, at all times, that the Borrower retains the same level of protection as provided under applicable European Union law and national law and, or as determined by European Union law or national law relating to conflict of law rules.
- As a general principle, it should be ensured that Borrowers are not worse off following the transfer of their Credit Agreement from a Credit Institution to a Credit Purchaser and, or following subsequent transfers of such. This means that the transfer or assignment of a Creditor's rights under a Credit Agreement, or of the Credit Agreement itself, to a Credit Purchaser should not affect in any manner the level of protection granted by European Union law and national law to Consumers.
- G.1.6 It is important that Consumer protection rules under European Union law and national law continue to apply and the Borrowers' rights continue to be those arising from the initial Credit Agreement. Therefore,

It needs to be ensured that the same standards of Borrowers' rights are preserved after the transfer of the Non-Performing Credit Agreement.

In the context of R.1.2(d) and G.1.3, the transfer of Non-Performing Credit Agreements is to be made without prejudice to the safeguards in place in the context of the Consumer protection rules in force in the Member State of the Borrower (either stemming directly from the initial Credit Agreement or from other rules applicable to credits delivered to Consumers or related to the general Consumer protection rules in force in the Member State of the Consumer).

Therefore, the Credit Purchaser and the Credit Servicer shall, as a minimum, in particular ensure that rights relating to a credit granted by a Credit Institution to Consumers in terms of:

- (a) the protection provided for Consumers guaranteed by Directive 2005/29/EC (the Unfair Commercial Practices Directive), Directive 93/13/EEC (the Unfair Contract Terms Directive), Directive 2008/48/EC (the Consumer Credit Directive) and Directive 2014/17/EU (the Mortgage Credit Directive); and
- (b) national civil law provisions that govern the assignment of contracts (also taking into account that Borrower rights should not be altered if the transfer of the Credit Agreement between a Credit Institution and a Credit Purchaser takes the form of contract novation),

continue to apply irrespective of who subsequently purchases the credit as a Credit Purchaser or services the credit as a Credit Servicer.

R.1.3 The Credit Servicer shall keep and maintain the following records for at least 5 years from the date on which the Credit Servicing Agreement referred to in R.1.1 is terminated, or for a longer time period as may be directed by the MFSA:

- (a) relevant correspondence with both the Credit Purchaser and the Borrower, under the conditions provided for under applicable national law;
- (b) relevant instructions received from the Credit Purchaser in respect of a Creditor's rights under each Non-Performing Credit Agreement, or the Non-Performing Credit Agreement itself, that it manages and enforces on behalf of that Credit Purchaser, under the conditions provided for under applicable national law;
- (c) the Credit Service Agreement.

- R.1.4 It should be possible to verify how the relationship between a Credit Purchaser and a Credit Servicer is determined. The Credit Servicer shall, upon request, make available the records referred to in R.1.3 to the MFSA and, where relevant, to other competent authorities designated pursuant to Article 21 of the NPL Directive.

#### **APPROPRIATE POLICIES AND PROCEDURES**

- R.1.5 The appointed Credit Servicer shall establish, maintain, apply and update all the necessary policies and procedures relating to its credit servicing activities, which shall as a minimum include:

- (a) appropriate policies and procedures to ensure compliance with all the applicable legislation and rules for the protection, and the fair and diligent treatment, of Borrowers, including by taking into account the Borrower's financial situation and, where available, it should consider the need for such Borrowers to be referred to debt advice services facilitating debt repayment or to social services available;
- (b) adequate and specific internal policies and procedures to ensure:
  - (i) the appropriate recording by the Credit Servicer of complaints from Borrowers, including the measures taken by it to address the said complaints; and
  - (ii) the effective and transparent handling by the Credit Servicer of complaints from Borrowers, in order to establish an efficient mechanism by which to treat complaints from Borrowers.

In this respect, the Credit Servicer shall also, as a minimum, ensure that, at all times, its treatment of complaints from Borrowers is made free of charge.

- G.1.5 In respect of R.1.5(a), it needs to be emphasised that in this context a Credit Servicer needs to demonstrate that it established the necessary organisational structure, including appropriate governance arrangements and internal control mechanisms, that allows it to ensure compliance with the relevant rules for Borrower protection.

## CHAPTER 2 REQUIREMENTS FOR BORROWER PROTECTION

### RELATIONSHIP WITH THE BORROWER, COMMUNICATION OF THE TRANSFER AND SUBSEQUENT COMMUNICATIONS

- R.2.1 A Credit Purchaser and a Credit Servicer shall, in their relationships with Borrowers:
- (a) always act in good faith, treat Borrowers fairly and act professionally;
  - (b) provide information to Borrowers that is not misleading, unclear or false;
  - (c) respect and protect the personal information and privacy of Borrowers; and
  - (d) communicate with Borrowers in a way that does not constitute harassment, coercion or undue influence.
- R.2.2 In the following scenarios, that is, after any transfer of a Creditor's rights under a Non-Performing Credit Agreement, or of the Non-Performing Credit Agreement itself to a Credit Purchaser (and always in advance of the first debt collection), as well as whenever requested by the Borrower, a Credit Purchaser and a Credit Servicer or Regulated Person shall ensure that they send to the Borrower a communication, on paper or on another Durable medium, which includes, at least, the following:
- (a) information on the transfer that took place, including the date of the transfer;
  - (b) the identification and contact details of the Credit Purchaser;
  - (c) when appointed, the identification and contact details of the Credit Servicer or of the Regulated Person;
  - (d) when appointed, evidence regarding the authorisation of a Credit Servicer granted pursuant to the relevant provisions of the Act implementing Article 7 of the NPL Directive;
  - (e) where relevant, the identification and contact details of the Credit Service Provider;
  - (f) presented in a prominent way, a contact reference point from which to receive information when needed:
    - (i) at the Credit Purchaser or, when appointed to perform credit servicing activities, at the Credit Servicer or at the Regulated Person; and

- (iii) where relevant, at the Credit Service Provider;
- (g) information on the amounts due by the Borrower at the time of the communication, detailing what is due as capital, interests, fees and other permitted charges;
- (h) a statement to the effect that all relevant European Union law and national law concerning in particular the enforcement of contracts, consumer protection, Borrower's rights and criminal law continues to apply;
- (i) the name, address and contact details of the competent authorities of the Member State in which:
  - (i) the Borrower is domiciled or its registered office is situated; or
  - (ii) if under its national law it has no registered office, the Member State in which its head office is situated and to which the Borrower can submit a complaint.

G.2.1 In the context of R.2.2(h), it is to be noted that Credit Purchasers that enforce the purchased Credit Agreement directly should do so in compliance with the law applicable to the credit agreement, including Consumer protection rules applicable to the Borrower; and in this respect rules under national law concerning in particular the enforcement of contracts, consumer protection and criminal law continue to apply.

R.2.3 A Credit Purchaser and a Credit Servicer or Regulated Person shall ensure that, in all the subsequent communications with the Borrower, it includes the information set out in R.2.2(f).

Provided that, in cases where it is the first communication with the Borrower after the appointment of a new Credit Servicer or Regulated Person, the information set out in R.2.2 (c) and (d) shall also be included therein (in addition to the information set out in R.2.2(f)).

R.2.4 A Credit Purchaser and a Credit Servicer or Regulated Person shall ensure that the communication of the transfer provided in advance of the first debt collection and whenever requested by Borrowers as referred to in R.2.2, as well as all the subsequent communications with the Borrower, are at all times written in a manner and in a use of language which is clear and understandable for the general public.

R.2.5 A Credit Purchaser and a Credit Servicer or Regulated Person shall ensure that its compliance with R.2.2 to R.2.4 are without prejudice to any additional requirements regarding communications provided for in other applicable European Union law or national law.

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