

**FINANCIAL SERVICES (CONSUMER CREDIT)  
ACT 2011**

**Principal Act**

<b>Act. No. 2011-12</b>	<i>Commencement (LN. 2011/093)</i>	16.6.2011
	<i>Assent</i>	4.5.2011
Amending enactments	Relevant current provisions	Commencement date
LN. 2012/220 Sch. 3		1.1.2013

**Transposing:**  
Directive 2011/90/EU

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AN ACT TO MAKE PROVISION FOR THE REGULATION OF CONSUMER CREDIT; AND MATTERS CONNECTED THERETO.

## PART I

### PRELIMINARY

#### **Title and commencement.**

1. This Act may be cited as the Financial Services (Consumer Credit) Act 2011 and comes into operation on the day appointed by the Government by notice in the Gazette.

#### **Scope of Act.**

2. This Act transposes into the law of Gibraltar the provisions of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

## PART II

### INTERPRETATION

#### **Interpretation.**

3. For the purpose of this Act—

“annual percentage rate of charge” shall have the meaning assigned to it under section 21;

“borrowing rate” means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;

“consumer” means a natural person who, in transactions covered by this Act, is acting for purposes which are outside his trade, business or profession;

“creditor” means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession;

“credit agreement” means an agreement whereby a creditor grants or promises to grant to a consumer 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

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for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments;

“credit intermediary” means a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration—

- (a) presents or offers credit agreements to consumers;
- (b) assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in (a); or
- (c) concludes credit agreements with consumers on behalf of the creditor;

“the Directive” means Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, as amended from time to time;

“the Director” means such person as the Minister shall appoint;

“durable medium” means any instrument which enables the consumer to store information addressed personally to him 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;

“fixed borrowing rate” means that the creditor and the consumer agree in the credit agreement on one borrowing rate for the entire duration of the credit agreement or on several borrowing rates for partial periods using exclusively a fixed specific percentage. If not all borrowing rates are determined in the credit agreement, the borrowing rate shall be deemed to be fixed only for the partial periods for which the borrowing rates are determined exclusively by a fixed specific percentage agreed on the conclusion of the credit agreement;

“linked credit agreement” means a credit agreement where—

- (a) the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service; and

- (b) those two agreements form, from an objective point of view, a commercial unit,

and, for the purpose of this definition, a commercial unit shall be deemed to exist where the supplier or service provider himself finances the credit for the consumer or, if it is financed by a third party, where the creditor uses the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement, or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement;

“the Minister” means the Minister responsible for financial services;

“overdraft facility” means an explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer’s current account;

“overrunning” means a tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer’s current account or the agreed overdraft facility;

“total amount of credit” means the ceiling or the total sums made available under a credit agreement;

“total amount payable by the consumer” means the sum of the total amount of the credit and the total cost of the credit to the consumer;

“total cost of the credit to the consumer” means all the costs, including interest, commissions, taxes, and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for legal costs; costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marked.

### PART III AGREEMENTS TO WHICH THIS ACT APPLIES

#### **Application of Act.**

- 4.(1) This Act shall apply to credit agreements.

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(2) Without prejudice to sub-section (1), this Act shall not apply to credit agreements—

- (a) which are secured—
  - (i) by a mortgage, or
  - (ii) by a privilege or by a right, related to immovable property;
- (b) the purpose of which is to acquire or retain property rights over the land or over an existing or projected building;
- (c) involving a total amount of credit less than Euro 200 or more than Euro 75,000;
- (d) 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 creditor;
- (e) in the form of an overdraft facility and where the credit has to be repaid within one month, except for section 9;
- (f) where the credit is granted free of interest and any other charges;
- (g) under the terms of which the credit has to be repaid within three months and only insignificant charges are payable;
- (h) 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;
- (i) which are concluded with investment firms as defined in the Financial Services (Markets in Financial Instruments) Act 2006 or with credit institutions as defined in the Financial Services (Banking) Act for the purpose of allowing an investor to carry out a transaction relating to one or more of the instruments listed in Section C of Schedule 1 to the Financial Services (Markets in Financial Instruments) Act 2006 where the investment firm or credit institution granting the credit is

- involved in such transaction and is regulated under that Act or the Financial Services (Banking) Act;
- (j) which are the outcome of a settlement reached in court or before a statutory authority;
  - (k) which relate to deferred payment, free of charge, of an existing debt;
  - (l) upon the conclusion of which the consumer is requested to deposit an item as security in the creditor's safe-keeping and where the liability of the consumer is strictly limited to that pledged item;
  - (m) 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 consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market.

(3) Credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months, shall be subject to only sections 3, 4, 8, 9, 10, 11, the obligation in section 12(1) that the consumer credit agreement be drawn up in writing or on a durable medium, 12(2), 12(3), 12(6), 12(7), 15, 17, 19(1), 19(2)(a) to (d), 20 and 21 to 29.

(4) An overrunning, shall be subject to sections 3, 4, 18 and 22 to 29.

#### PART IV OBLIGATIONS OF THE CREDITOR AND CREDIT INTERMEDIARY

##### **Obligation to comply with Act.**

5.(1) A creditor shall take all necessary steps to ensure full compliance with this Act.

(2) For the purpose of this Part, unless otherwise provided, the obligations of the creditor shall equally apply to a credit intermediary where a credit intermediary presents or offers credit agreements to consumers, assists consumers by undertaking preparatory work in respect of credit agreements, or concludes credit agreements with consumers on behalf of the creditor.

(3) Where a credit intermediary participates or intends to participate in terms of sub-section (2), a credit intermediary shall—

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- (a) indicate in advertising and documentation intended for consumers, the extent of his powers in particular whether he works exclusively with one or more creditors or as an independent broker;
- (b) disclose the fee, if any, payable by the consumer to the credit intermediary for his services, which fee shall be agreed by in writing or on another durable medium between the consumer and the credit intermediary before the conclusion of the credit agreement;
- (c) disclose the fee, if any, payable by the consumer to the credit intermediary for his services to the creditor for the purpose of calculating the annual percentage rate of charge.

(4) Sub-section (2) does not apply to suppliers of goods or services acting as credit intermediaries in an ancillary capacity. This is without prejudice to the creditor's obligation to ensure that the consumer receives the pre-contractual information referred to under sections 7 and 8.

## **Obligation to provide pre-contractual information.**

6.(1) In good time before a credit agreement is concluded, a creditor and, where applicable, a credit intermediary, on the basis of the credit terms and conditions offered by the creditor, and taking into account the preferences expressed and information supplied by the consumer, shall provide to the consumer the information identified under sections 7 and 8, in order to assist the consumer in comparing different offers and reaching an informed decision on whether to conclude a credit agreement with the creditor.

(2) In assisting a consumer under sub-section (1) a creditor and, where applicable, a credit intermediary, shall provide adequate explanations to the consumer in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and financial situation, where appropriate by explaining the pre-contractual information to be provided under section 7, the essential characteristics of the products proposed and specific effects they may have on the consumer, including the consequences of default in payment by the consumer.

## **Content of pre-contractual information.**

7.(1) The information to be disclosed by a creditor or credit intermediary to consumers under section 6, other than consumers whose credit agreement is regulated by sections 8 and 9, shall be the following—

- (a) the type of credit to be provided under the agreement;
- (b) the identity and geographical address of the creditor and of the credit intermediary, where applicable;
- (c) the total amount of credit to be provided under the 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, a description of the goods, services and the cash price;
- (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 procedure for changing the borrowing rate; and if different borrowing rates apply in different circumstances, the above information shall be supplied in respect of all the applicable rates;
- (g) the annual percentage rate of charge and the total amount payable by the consumer illustrated by means of a representative example mentioning all the assumptions used in order to calculate that rate. Where the consumer has informed the creditor of one or more components of his preferred credit, such as the duration of the credit agreement and the total amount of credit, the creditor shall take those components into account; and if a credit agreement provides different ways of drawdown with different charges or borrowing rates and the creditor uses the assumptions set out in point (b) of Part II of Schedule 3, he shall indicate that other drawdown mechanisms for this type of credit agreement may result in higher annual percentage rates of charge;
- (h) the amount, number and frequency of payments to be made by the consumer 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

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for using a means of payment for both payment transactions and drawdowns;

- (j) any other charges deriving from a credit agreement and the conditions under which those charges may be changed;
- (k) where applicable, a statement that legal costs will be payable by the debtor on conclusion of the credit agreement;
- (l) the obligation, if any, to enter into a contract for ancillary services relating to the consumer 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 by default;
- (n) a warning relating to the consequences of missing payments;
- (o) where applicable, the sureties which need to be identified by the debtor;
- (p) in the case of a credit agreement under which payments made by a consumer 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 consumer's right to early repayment and, where applicable, the creditor's right to compensation and the way in which compensation is to be determined in accordance with section 16;
- (s) the consumer's right to be informed immediately and free of charge of information relating to his creditworthiness;
- (t) if applicable, the period of time during which the creditor is bound by the pre-contractual information;

- (u) the consumer's right to be supplied, on request and free of charge with a copy of the draft credit agreement; save that this provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer.

(2) The information under sub-section (1) shall be provided on paper or on another durable medium by means of the form contained in Schedule 1; and the creditor shall have discharged the obligation of providing information under this section and of providing information under sub-section (1) and (2) of section 7 of the Financial Services (Distance Marketing) Act 2006 if he has supplied the information in the form contained in Schedule 1.

(3) Should the creditor provide to the consumer additional information to the one identified under sub-section (1), a separate document shall be entered into between the creditor and the consumer, and shall be annexed to the one under sub-section (2).

(4) In the case of a voice telephone communication as referred to in sub-section (3) of section 7 of the Financial Services (Distance Marketing) Act 2006, the obligation to provide a description of the main characteristics of the financial services shall include—

- (a) a reference to—
  - (i) the total amount of credit and the conditions governing the drawdown;
  - (ii) the duration of the credit agreement;
  - (iii) a description of 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;
  - (iv) the borrowing rate, the conditions governing the application of that rate and, where applicable, any index or reference applicable to the initial borrowing rate, as well as the periods, conditions, and procedure for changing the borrowing rate; and if different borrowing rates apply in different circumstances, the above information shall be supplied in respect of all the applicable rates; and
  - (v) the amount, number and frequency of payments to be made by the consumer and where appropriate, the order

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in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purpose of reimbursement;

- (b) the annual percentage rate of charge illustrated by means of a representative example; and
- (c) the total amount payable by the consumer.

(5) If the agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with sub-section (1), in particular in the case referred to in sub-section (4), the creditor shall provide the consumer with the full pre-contractual information, using the form in Schedule 1, immediately after the conclusion of the credit agreement.

**Pre-contractual information relating to an overdraft facility where the credit has to be repaid on demand or within three months.**

8.(1) In good time before the agreement is entered into, the creditor and, where applicable, the credit intermediary, shall provide to the consumer the following information 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—

- (a) the type of credit to be provided under the agreement;
- (b) the identity and geographical address of the creditor and of the credit intermediary, where applicable;
- (c) the total amount of credit to be provided under the agreement;
- (d) the duration of the credit agreement;
- (e) the borrowing rate, the conditions governing the application of that rate and, where applicable, 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 annual percentage rate of charge, illustrated by means of representative examples mentioning all the assumptions used in order to calculate that rate;
- (g) the conditions and procedure for terminating the agreement;

- (h) an indication that the consumer may be requested to repay the amount of credit in full at any time;
- (i) the interest rate applicable in the case of late payment and the arrangements for its adjustment, and, where applicable, any charges payable for default;
- (j) the charges applicable from the time the agreement is concluded and, where applicable, the conditions under which those charges may be changed;
- (k) the consumer's right to be informed immediately and free of charge of information relating to his creditworthiness;
- (l) if applicable, the period of time during which the creditor is bound by the pre-contractual information.

(2) The information under sub-section (1) shall be provided in writing or on a durable medium, and may be provided in the form contained in Schedule 2; and the creditor shall have discharged the obligation of providing information under this section and the information under sub-section (1) and (2) to section 7 of the Financial Services (Distance Selling Marketing) Act 2006 if he has supplied the information in the form contained in Schedule 2.

(3) In the case of a voice telephony communication and where the consumer requests that the overdraft facility be made available with immediate effect, the description of the main characteristics of the financial service shall include at least the items identified under paragraphs (c), (e), (f) and (h) of sub-section (1).

(4) If the agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with sub-sections (1) and (2), including in the cases referred to in sub-section (3), the creditor shall immediately, after the conclusion of the credit agreement, fulfil his obligations under sub-sections (1) to (3) by providing the contractual information pursuant to section 12 in so far as that section is applicable.

**Pre-contractual information relating to an overdraft facility where the credit has to be repaid within one month.**

9. Notwithstanding section 4(2)(e), in the case of a credit agreement in the form of an overdraft facility and where the credit has to be repaid within one month, the creditor shall disclose to the debtor the following information—

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- (a) the total amount of credit to be provided under the agreement and the conditions governing the drawdown of credit;
- (b) the borrowing rate, the conditions governing the application of that rate and, where applicable, any index or reference 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;
- (c) the annual percentage rate of charge, illustrated by means of representative examples mentioning all the assumptions used in order to calculate that rate; and
- (d) an indication that the consumer may be requested to repay the amount of credit in full at any time.

## **Creditworthiness.**

10.(1) Before the conclusion of an agreement the creditor shall assess the creditworthiness of the consumer by obtaining sufficient information where appropriate from the consumer and where necessary on the basis of a consultation of a relevant database.

(2) If the parties agree to change the total amount of credit after the conclusion of the credit agreement, the creditor shall—

- (a) update the financial information at this disposal concerning the consumer; and
- (b) assess the consumer's creditworthiness,

before the total amount of credit is significantly increased.

## **PART V RIGHTS OF THE CONSUMER**

### **Right to receive copy of agreement.**

11.(1) The consumer shall be entitled to receive, free of charge, and upon request, a copy of the draft consumer credit agreement.

(2) Sub-section (1) does not apply if the creditor is, at the time of the consumer's request, unwilling to proceed to the making of the agreement with the consumer.

(3) On conclusion of the consumer credit agreement, the consumer shall be entitled to receive, free of charge, a copy of the final agreement.

#### **Content of consumer credit agreement.**

12.(1) The consumer credit agreement referred to in section 11(3) shall be drawn up in writing on paper or on another durable medium and shall contain the following information—

- (a) the information listed under sub-section (a) to (f), (h), (i), (j), (k), (m), (n), and (o) of sub-section (1) to section (7);
- (b) the annual percentage rate of charge and the total amount payable by the consumer calculated at the time the credit agreement is concluded; provided that—
  - (i) all the assumptions used in calculating the rate shall be mentioned;
  - (ii) for the purpose of credit facilities granted by banking institutions, the credit agreement relating to such facilities shall be deemed to be concluded on the acceptance by the consumer in writing to the terms and conditions stipulated in the sanction letter.
- (c) where capital amortisation of a credit agreement with a fixed duration is involved, the right of the consumer 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 contain the following information—
  - (i) the payments owing and the periods and conditions relating to the payment of such amounts;
  - (ii) a breakdown of each repayment showing capital amortisation;
  - (iii) the interest calculated on the basis of the borrowing rate;
  - (iv) where applicable, the amount of any additional costs; and

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- (v) 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;
- (d) 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;
- (e) the existence or absence of a right of withdrawal together with conditions attached to such right, which conditions shall include the—
  - (i) period during which the right may be exercised;
  - (ii) information concerning the obligation of the consumer to pay the capital drawn down and the interest in accordance with section 14(3)(b); and
  - (iii) amount of interest payable per day;
- (f) information concerning the rights resulting under sections 15 and 16 and the conditions attached to such rights;
- (g) the procedure to be followed in exercising the right of termination of the credit agreement;
- (h) whether or not there is a procedure to be followed should a complaint be lodged by the consumer, the redress mechanism available for the consumer and the methods for having access to it;
- (i) where applicable, details of the competent supervisory authority;
- (j) where applicable, other contractual terms and conditions.

(2) In the case of a credit agreement under which payments made by the consumer 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, the information contained in sub-section (1) 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 under the credit agreement.

(3) In the case of a credit agreement falling under section 8(1), the agreement shall contain, 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 and 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; if different borrowing rates apply in different circumstances, the above information should be made applicable to all respective rates;
- (e) the annual percentage rate of charge and the total cost of the credit to the consumer, calculated at the time the credit agreement is concluded; all the assumptions used in order to calculate that rate in terms of section 21(3) to (5) in conjunction with the definitions of “total cost of credit to the consumer” and “annual percentage rate of charge” in section 3 shall be mentioned;
- (f) an indication that the consumer may, at any time, upon demand be requested to repay the amount of credit in full;
- (g) conditions relating to the exercise of the right of withdrawal from the credit agreement;
- (h) the charges applicable from time the agreement is concluded and, where applicable, the conditions under which those charges may be changed; and
- (i) the duration of credit agreement.

(4) Should there be a change in the borrowing rate, the creditor shall—

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- (a) inform the consumer of such a change before the change enters into force;
- (b) communicate the information in writing or on a durable medium;
- (c) inform the consumer of the amount of the 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, particulars of such payment changes.

(5) The parties may agree in the credit agreement that the information referred to in sub-section (4) is to be given to the consumer periodically in cases where the—

- (a) change in the borrowing rate is caused by a change in a reference rate;
- (b) new reference rate is made publicly available by appropriate means; and
- (c) information concerning the new reference rate is also kept available in the premises of the creditor.

(6) Where the credit agreement covers credit in the form of an overdraft facility—

- (a) the consumer is entitled to be kept regularly informed in writing or on a durable medium in writing 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 consumer;
  - (vi) the borrowing rate applied;

- (vii) any charges that have been applied;
  - (viii) where applicable, the minimum amount to be paid;
- (b) should there be any increase in the borrowing rate, and before the change enters into force, the consumer is entitled to be informed in writing or on a durable medium by the creditor of the increase involved and of any charges payable.

(7) The parties may agree in the credit agreement that information concerning changes in the borrowing rate is to be given in the manner provided for in sub-section (6)(a) in the circumstances described in paragraphs (a) to (c) of sub-section (5).

**Right to terminate an open-end credit agreement.**

13.(1) A consumer is entitled to terminate an open-end credit agreement at any time and free of charge.

(2) A consumer credit agreement may however provide for a period of notice not exceeding one month before termination by the consumer.

(3) If provided for in the agreement, the creditor may terminate an open-end consumer credit agreement by giving the consumer not less than two months' notice in writing or on a durable medium.

(4) A creditor may not terminate the consumer's right to draw down credit under an open-end consumer credit agreement unless such termination is provided for in the agreement and is for an objectively justified reason. For these purposes, "objectively justified reasons" include suspicion by the creditor that the consumer is involved in an unauthorised or fraudulent use of a credit, or that there is significant risk that the consumer will be unable to fulfil his obligation to pay the credit.

(5) Where the creditor intends to invoke sub-section (4), he shall inform in writing or on a durable medium the consumer of the termination and the reasons leading to such termination before the date of termination or, if that is not practicable, immediately thereafter.

(6) Sub-section (5) shall not apply where provision of the information would be contrary to public policy or public security or is unlawful.

**Right to withdraw.**

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14.(1) A consumer has a right to withdraw from a consumer credit agreement without giving any reasons.

(2) The consumer's right to withdraw must be exercised within a period of 14 calendar days which period starts to run either—

- (a) from the day of the conclusion of the credit agreement, where a copy of the agreement is given to the consumer on the same date; or
- (b) from the day when the consumer receives a copy of the agreement, where a copy of the agreement is given to the consumer at a later date,

provided that for the purpose of credit facilities granted by banking institutions which necessitate the issue of a letter of acceptance, the agreement shall be deemed to be concluded on the day the consumer accepts in writing the terms and conditions listed in the letter of acceptance.

(3) If the consumer exercises his right of withdrawal, he shall—

- (a) in order to give effect to the withdrawal before the expiry of the period specified in sub-section (2), notify in writing the creditor in conformity with the information given to the consumer under section 12(1)(e). The deadline shall be deemed to have been met if that notification, if it is in writing or on a durable medium that is available and accessible to the creditor, is dispatched before the deadline expires;
- (b) repay to the creditor the credit provided and pay the interest accrued on it, to be calculated on the basis of the borrowing rate in the agreement, from the date the credit was drawn down until the date it is repaid, without any undue delay and no later than 30 calendar days after giving a notification in accordance with sub-section (a),

provided that the creditor shall not be entitled to any other compensation from the consumer in the event of withdrawal, except compensation for any non-refundable charges paid by the creditor to any public administrative body.

(4) Where an ancillary service relating to a consumer credit agreement is provided by the creditor or by a third party on the basis of an agreement between the third party and the creditor, the consumer shall not be bound by the ancillary service agreement if the consumer exercises his right of withdrawal in accordance with this section.

(5) By virtue of sub-sections (1) to (4), sections 9 and 13 of the Financial Services (Distance Marketing) Act 2006 and article 5 of Council Directive 85/577/EEC as applied by section 42 of the Contract and Tort Act do not apply.

**Linked credit agreements: Right of consumer to pursue claim against creditor**

15.(1) Where the consumer has exercised a right of withdrawal concerning a contract for the supply of goods or services, he shall no longer be bound by a linked credit agreement.

(2) A consumer shall have the right to take action against the creditor for the fulfilment of his claim where—

- (a) in order to buy goods or obtain services, the consumer enters into a credit agreement with a creditor other than the supplier of such goods or services;
- (b) the creditor and the supplier of the goods or services have a pre-existing agreement where credit is made exclusively by that creditor to customers of that supplier for the acquisition of goods or services from that supplier;
- (c) the consumer referred to in paragraph (a) obtains his credit pursuant to that pre-existing agreement;
- (d) the goods or services covered by the linked-credit agreement are not supplied, are supplied in part, or are not in conformity with the contract for supply thereof; and
- (e) the consumer has pursued his remedies against the supplier but has failed to obtain the remedy to which he is entitled in whole or in part.

(2) Sub-section (2) is without prejudice to any statutory provision or rule of law relating to joint and several liability in respect of any claim which the consumer may have against the supplier where the purchase of the goods or services from the supplier has been financed by a credit agreement.

**Right to early repayment.**

16.(1) A consumer shall have the right to discharge his obligations under a consumer credit agreement, in full or in part, before the time established in the agreement.

(2) If the consumer pays the creditor before the time established by the agreement—

- (a) the consumer 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 creditor shall be entitled to a fair and objectively justified compensation for possible costs directly linked to early repayment of credit; provided that the early repayment falls within a period for which the borrowing rate is fixed, and that the compensation may not exceed—
  - (i) 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;
  - (ii) 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.

(3) The limitations under sub-section (2) in terms of the amount of compensation which may be claimed by the creditor shall exceptionally not apply if the creditor proves that the loss suffered from early repayment exceeds the amount determined under sub-section (2).

(4) Compensation for early repayment under sub-section (2)(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 Euro 3,000 within any period of 12 months.

(5) A creditor may not claim compensation which is in excess of the amount of interest which the consumer would have paid during the period between the early repayment and the agreed date of termination of the credit agreement.

(6) A consumer may claim a reduction to the compensation claimed by the creditor if the compensation claimed exceeds the loss actually suffered. For these purposes, the loss suffered shall consist of the difference between the initial agreed interest rate and the interest rate at which the creditor 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.

**Rights relating to assignment of rights and set-off.**

17.(1) Where the rights of the creditor under a credit agreement are assigned to a third party, the consumer shall be entitled to raise against that assignee any defence available to him against the original creditor. Such defence may also include the right to set-off; provided that set-off may only be raised subject to the provisions of the Contract and Tort Act, which shall apply irrespective of anything to the contrary contained in the credit agreement.

(2) Where the rights of the credit are assigned as provided under subsection (1), the consumer is entitled to be informed of such assignment in writing, except where the original creditor, by agreement with the assignee, continues to service the credit towards the consumer.

**Overrunning.**

18.(1) Where a consumer enters into an agreement to open a current account and the consumer is allowed an overrun, the agreement shall contain 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.

(2) In the event of a significant overrunning exceeding a period of one month, the creditor shall inform the consumer without delay, in writing or on another durable medium of the—

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- (a) overrunning;
- (b) amount involved;
- (c) borrowing rate; and
- (d) penalties, charges or interests on arrears which are applicable.

(3) The information under sub-section (1) shall be in writing or on a durable medium and provided on a regular basis.

## PART VI MISCELLANEOUS

### **Advertisements.**

19.(1) Where a credit advertisement includes an interest rate or any figure relating to the cost of the credit to the consumer, the advertisement shall also include standard information by means of a representative example in accordance with sub-section (2).

(2) The representative example referred to in sub-section (1) shall comprise the following items of information—

- (a) the borrowing rate, whether fixed, variable or both;
- (b) particulars of any charges included in the total charge for credit;
- (c) the total amount of credit;
- (d) the annual percentage rate of charge;
- (e) the duration of the agreement except where the agreement is open ended;
- (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 consumer;
- (h) if applicable, the amount of each instalment for the repayment of credit.

- (3) The following provisions apply–
- (a) a credit advertisement 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–
    - (i) the conclusion of that service is compulsory in order to obtain the credit or to obtain it on the terms and conditions advertised;
    - (ii) the cost of that service cannot be determined in advance;
  - (b) the obligation referred to in sub-section (1) shall be advertised in a prominent way and accompanied by the annual percentage rate of charge.

**Cross border credit.**

20.(1) A creditor from a Member State who intends to enter, or has entered, into a credit agreement with a consumer in Gibraltar, shall have access under the same conditions as a Gibraltarian creditor, to the databases which are available in Gibraltar in order to assess the creditworthiness of the consumer; provided that a request by a creditor for access to the said database may be refused by the holder of the database if the information to be provided is contrary to the public policy or public security of Gibraltar, or is subject to protection under the Data Protection Act 2004.

(2) If the credit application is rejected on the basis of consultation of a database, the creditor shall inform the consumer immediately and without charge of the result of such consultation and of the particulars of the database consulted.

**Calculation of the annual percentage rate of charge.**

21.(1) The annual percentage rate of charge means the total cost of credit to the consumer, expressed as an annual percentage of the total amount of credit.

(2) The annual percentage rate of charge, equating, on an annual basis, to the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Part I of Schedule 3.

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(3) The following costs shall be included in the total cost of credit to the consumer—

- (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.

(4) The costs at sub-section (3) shall not be included in the total cost of credit to the consumer where the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement made with the consumer.

(5) For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined, with the exception of any charges payable by the consumer 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.

(6) The calculation of the annual percentage rate of charge shall be based on the assumption that—

- (a) the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement;
- (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, the charges contained in the annual percentage rate of charge but are unquantifiable at the time of calculation.

(7) Where necessary the additional assumptions set out in Part II of Schedule 3 may be used in calculating the annual percentage rate of charge.

## PART VII FINAL PROVISIONS

### **Enforcement and monitoring.**

22. It shall be the responsibility of the Director under this Act to—
- (a) monitor the working and effectiveness of this Act and take such measures as the Director deems necessary in order to ensure compliance with this Act;
  - (b) supervise the creditors and credit intermediaries in order to ensure compliance by them with the obligations identified under this Act;
  - (c) ensure that the rights granted to consumers by this Act are not diminished by any other enactment or rule of law.

**Offences.**

23.(1) Any person who contravenes or fails to comply with any of the provisions of this Act shall be guilty of an offence.

(2) Proceedings in respect of an offence against this Act shall be commenced within three years from the commission of the offence.

(3) Any person guilty of an offence against this Act shall on conviction be liable to a fine at level 5 on the standard scale.

(4) Any proceedings undertaken under this Act shall be without prejudice to the right of the consumer to undertake any action to seek compensation due to any loss or damage incurred by him as a result of the breach of this Act.

**Act to prevail.**

24.(1) The provisions of this Act shall prevail and apply notwithstanding anything to the contrary contained in any credit agreement entered into by the consumer.

(2) Any waiver by the consumer of any of the rights granted to him by this Act shall be null and void.

**Application of existing law.**

25.(1) Where there is a conflict between the provisions of this Act and the Financial Services (Moneylenders) Act in respect of a credit agreement to which this Act applies by virtue of section 4, the provisions of this Act shall prevail.

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(2) For the avoidance of doubt, the Financial Services (Moneylenders) Act shall continue to apply in respect of a credit agreement to which this Act does not apply by virtue of section 4.

(3) A licence granted to a moneylender under the Financial Services (Moneylenders) Act shall clearly state whether the moneylender is authorised to enter into credit agreements to which this Act applies, and any such licence shall be granted subject to the provisions of this Act being honoured at all times by the moneylender.

## **Continuity of the law.**

26.(1) This Act shall only apply in relation to credit agreements that are concluded after the coming into force of this Act.

(2) Notwithstanding subsection (1), sections 12(4) to (7), 13, 17, 18(2) and 18(3) apply to open-end credit agreements concluded prior to the coming into force of this Act.

## **Regulations.**

27.(1) The Minister may, by regulations, prescribe anything requiring to be prescribed and generally do anything requiring to be done pursuant to the provisions of this Act.

(2) Without prejudice to the generality of sub-section (1) the Minister may, by regulations—

- (a) provide for applications for authorisations, fees, forms and offences as he may deem appropriate in order to make better provision for the execution of this Act;
- (b) amend the Schedules;
- (c) make such provision as he deems appropriate in cases where a condition subject to which an authorisation is granted has been breached, including penalties, withdrawal or suspension of the authorisation or other sanctions;
- (d) make such provision as he deems appropriate to apply this Act, or parts thereof, to credit agreements which provide for arrangements to be agreed by the creditor and the consumer in respect of deferred payment or repayment methods, where the consumer is already in default on the initial credit agreement.

## **Codes of practice.**

28.(1) The Director shall, with the prior consent of the Minister, cause to be published in the form of codes of practice, statements setting out the criteria and any variation in the criteria from time to time by reference to which the Director proposes to exercise his functions under this Act.

(2) The Director shall, with the prior consent of the Minister, publish in the form of codes of practice under this Act, criteria to facilitate compliance in Gibraltar with the provisions of this Act.

(3) A code of practice published under this section shall be admissible in evidence in any action commenced in connection with the operation of this Act.

**Alternative dispute resolution.**

29.(1) Any dispute between parties to an agreement to which this Act applies may be put to the Director for resolution.

(2) For the purposes of this section, the Director may deal with the dispute as if an arbitration agreement between the parties to the dispute to which the Arbitration Act applies subsisted appointing him sole arbitrator.

**Revocation.**

30. The Financial Services (Moneylending) (Amendment) Regulations 2011 are revoked.

This version is out of date

## SCHEDULE 1

Section 7(2)

### STANDARD EUROPEAN CONSUMER CREDIT INFORMATION

#### 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 (*) Wed address	[Identity] [Geographical address to be used by the consumer]

(1) 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,	You will have to pay the following:

This version is out of date

the order in which instalments will be allocated	[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>	

#### 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) <i>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.</i>	[% A representative example mentioning all the assumptions used for calculating the rate to be set out here]
Is it compulsory, in order to obtain	

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<p>the credit or to obtain it on the terms and conditions marketed, to take out</p> <p>-</p> <p>— an insurance policy securing the credit, or</p> <p>— another ancillary service contract,</p> <p>If the costs of these services are not known by the creditor they are not included in the APR.</p>	<p>Yes/no [if yes, specify the kind of insurance]</p> <p>Yes/no [if yes, specify the kind of ancillary service]</p>
Related costs	
If applicable Maintaining one or more accounts is required for recording both payment transactions and drawdowns	
If applicable Amount of costs for using a specific means of payment (e.g. a credit card)	
If applicable Any other costs deriving from the credit agreement	
If applicable Conditions under which the abovementioned costs related to the credit agreement can be changed	
If applicable Obligation to pay legal costs	
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.

<p>Right of withdrawal <i>You have the right to withdraw from the credit agreement within a period of 14 calendar days.</i></p>	<p>Yes/no</p>
<p>Early repayment <i>You have the right to repay the credit early at any time in full or partially.</i></p>	
If applicable	[Determination of the compensation

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The creditor is entitled to compensation in the case of early repayment	(calculation method) in accordance with the provisions implementing Article 16 of Directive 2008/48/EC]
<p>Consultation of a database</p> <p><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>Right to a draft credit agreement</p> <p><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>If applicable</p> <p>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.

(a) concerning the creditor	
<p>If applicable</p> <p>Representative of the creditor in your Member State of residence</p> <p>Address</p> <p>Telephone number (*)</p> <p>E-mail address (*)</p> <p>Fax number (*)</p> <p>Web address (*)</p>	<p>[Identity]</p> <p>[Geographical address to be used by the consumer]</p>
<p>If applicable</p> <p>Registration</p>	[The trade register in which the creditor is entered and his registration number or an equivalent means of identification in that

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	register]
If applicable The supervisory authority	
(b) concerning the credit agreement	
If applicable Exercise of the right of withdrawal	[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]
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.	

## SCHEDULE 2

Section 8(2)

## EUROPEAN CONSUMER CREDIT INFORMATION FOR

## (1) overdrafts

## (2) consumer credit offered by certain credit organisations (Article 2(5) of Directive 2008/48/EC)

## (3) debt conversion

## 3. 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>	

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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)],
If applicable The annual percentage rate of charge (APR) (*) <i>This is the total cost of credit expressed as an annual percentage of the total amount of credit. The APR is there to help you compare different offers.</i>	[ % A representative example mentioning all the assumptions used for calculating the rate to be set out here]
If applicable Costs If applicable The conditions under which those costs may be changed	[The costs applicable from the time the credit agreement is concluded]
Costs in the case of late payments	You will be charged [..... (applicable interest rate and arrangements for its adjustment and, where applicable, default charges)] for missing payments.
(*) Not applicable to European Consumer Credit Information for overdrafts in those Member States which decide on the basis of Article 6(2) of Directive 2008/48/EC that the APR need not be provided for overdrafts.	

### 4. Other important legal aspects.

Termination of the credit agreement	[The conditions and procedure for terminating the credit agreement]
Consultation of a database <i>The creditor must inform you</i>	

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<i>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>	
If applicable The period of time during which the creditor is bound by the pre-contractual information	This information is valid from ... until...

If applicable

**5. Additional information to be given where the pre-contractual information is provided by certain credit organisations (Article 2(5) of Directive 2008/48/EC or relates to a consumer credit for debt conversion.**

Instalments and, where appropriate, the order in which instalments will be allocated	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]
The total amount you will have to pay	
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	[Determination of the compensation (calculation method) in accordance with the provisions implementing Article 16 of Directive 2008/48/EC]

If applicable

**6. Additional information to be given in the case of distance marketing of financial services.**

(a) concerning the creditor	
If applicable Representative of the creditor in	[Identity]

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your Member State of residence Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[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>(b) concerning the credit agreement</b>	
Right of withdrawal <i>You have the right to withdraw from the credit agreement within a period of 14 calendar 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 exercise of the right 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 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.
<b>(c) concerning redress</b>	
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.	

## SCHEDULE 3

Section 21(2) and (7)

## PART 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 –

- 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–

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- (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 (AO, which will be positive or negative, in other words either paid or received during periods 1 to k, expressed in years, i.e. -

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

S being the present balance of flows. If the aim is to maintain the equivalence of flows, the value will be zero.

## PART II

### **Additional assumptions for the calculation of the annual percentage rate of charge.**

1. The additional assumptions for the calculation of the annual percentage rate of charge shall be as follows—

- (a) if a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall be deemed to be drawn down immediately and in full;
- (b) if a credit agreement gives the consumer freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit shall be deemed to be

drawn down on the earliest date provided for in the credit agreement and in accordance with those drawdown limits;

- (c) if a credit agreement provides different ways of drawdown with different charges or borrowing rate, the total amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of credit agreement;
- (d) in the case of an overdraft facility, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the overdraft facility is not known, the annual percentage rate of charge shall be calculated on the assumption that the duration of the credit is 3 months;
- (e) in the case of an open-end credit agreement, other than an overdraft facility, it shall be assumed that—
  - (i) the credit is provided for a period of 1 year starting from the date of the initial drawdown, and that the final payment made by the consumer clears the balance of capital, interest and other charges, if any,
  - (ii) the capital is repaid by the consumer in equal monthly payments, commencing 1 month after the date of the initial drawdown. However, in cases where the capital must be repaid only in full, in a single payment, within each payment period, successive drawdowns and repayments of the entire capital by the consumer shall be assumed to occur over the period of 1 year. Interest and other charges shall be applied in accordance with those drawdowns and repayments of capital and as provided for in the credit agreement,

for the purposes of this subparagraph, an open-end credit agreement is a credit agreement without fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again;

- (f) in the case of credit agreements other than overdrafts and open-end credits as referred to in the assumptions set out in subparagraphs (d) and (e)—
  - (i) if the date or amount of a repayment of capital to be made by the consumer cannot be ascertained, it shall be

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- assumed that the repayment is made at the earliest date provided for in the credit agreement and is for the lowest amount for which the credit agreement provides,
- (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 subparagraphs (d), (e) or (f) it shall be assumed that the payment is made in accordance with the dates and conditions required by the creditors 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 1,500;
- (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

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## Financial Services (Consumer Credit)

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annual percentage rate, based on the value of the agreed indicator at the time.