

EU Consumer Law Acquis Compendium

Legislation

Malta (MT) Nr. 4



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Full name and/or number of the statute (in original language):

Att dwar l-Affarijiet tal-Konsumatur Kapitlu 378 tal-Ligijiet ta' Malta

Translation of the name:

Consumer Affairs Act

Reference in Official Journal (if appropriate):

L.M. 2002, 378

Date of coming into force:

15.10.2002

Subsequent amendments:

Act VI of 2011 entitled "Part XIV Amendments to the Consumer Affairs Act"

Text:

CHAPTER 378

CONSUMER AFFAIRS ACT

To provide for the powers of the Director General (Consumer Affairs), for the establishment and functions of a Consumer Affairs Council and for the establishment and jurisdiction of the Consumer Claims Tribunal and for other matters ancillary or consequent thereto.

23rd January, 1996

ACT XXVIII of 1994 as amended by Acts V of 1995, XIX of 1996, XXVI of 2000, VI of 2001 and XV of 2006; Legal Notice 425 of 2007; and Acts II of 2008, XIV of 2009, and VI and IX of 2011.

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PART I

Preliminary

Short title. 1. The short title of this Act is the Consumer Affairs Act.

Interpretation.

Amended by:

V. 1995.20;

XXVI. 2000.2;

XV. 2006.3;

II. 2008.5, 6;

VI. 2011.75.

2. In this Act, unless the context otherwise requires - "advertisement" means any form of representation, including a catalogue, a circular and a price list, about a trade, business, craft or profession in order to promote the supply or transfer of goods or services, immovable property, rights or obligations and "advertising" shall be construed accordingly;

Cap. 510.

"Appeals Tribunal" means the Competition and Consumer

Appeals Tribunal as established by article 31 of the Malta

Competition and Consumer Affairs Authority Act;

Cap. 510.

"the Authority" means the Malta Competition and Consumer

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Affairs Authority as established by article 3 of the Malta

Competition and Consumer Affairs Authority Act;

Cap. 510.

"the Board" means the Board of Governors as established by article 8 of the Malta Competition and Consumer Affairs Authority Act;

"consumer" means -

(i) any individual who in transactions and other matters covered by this Act or any regulations made thereunder, is acting for purposes which are not related to his trade, business, craft or profession; and

(ii) any other individual not being the immediate purchaser or beneficiary, and whether or not a member of the consumer's household, who having been expressly or tacitly authorised or permitted by the consumer, may have consumed, used or benefited from any goods or services provided to the consumer by a trader acting in the course of a trade, business, craft or profession, including goods or services provided as part of gift schemes and similar or analogous inducements; and

(iii) any other class or category of persons whether

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natural or legal as may, from time to time, be designated as "consumers" for all or for any of the purposes of this Act by regulations made by the Minister after consulting the Council:

Provided that for the purposes of Title I of Part VII of this Act, the definition of "consumer" shall only consist of paragraph (i) above;

"consumer association" means a voluntary body of persons whose principal objective is the promotion of consumer protection or education;

"Consumer Protection Co-operation Regulation" means Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws (text with EEA relevance);

"Council" means the Consumer Affairs Council established under Part II of this Act;

Cap. 510.

"the Director General" means the Director General (Consumer Affairs) as appointed by article 16 of the Malta Competition and Consumer Affairs Authority Act;

"goods" include any movable property, whether tangible or intangible, that may form the object of trade, including animals and fish of whatever species whether living or dead;

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"Member State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent acts;

"Minister" means the Minister responsible for consumer affairs;

Cap. 510.

"the Office" means the Office for Consumer Affairs as established under article 16(1) of the Malta Competition and Consumer Affairs Authority Act;

Cap. 380.

"ordinary court" for the purposes of Part III of this Act includes the Small Claims Tribunal established under the Small Claims Tribunal Act;

Cap. 217.

"permanent resident" means a person in whose favour a permit of residence has been issued in accordance with article 7 of the Immigration Act;

"premises" means any place from where any trade or business is carried out including any stall or vehicle;

Cap. 510.

"public authority" shall have the same meaning assigned to it in article 2 of the Malta Competition and Consumer Affairs Authority Act;

"qualified entity" means -

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- (a) a registered consumer association,
 - (b) an independent public body, having a legitimate interest in ensuring the protection of the collective interests of consumers in Malta or in any other Member State in which such bodies exist,
 - (c) a voluntary organisation in Malta as the Minister may, after consulting the Council, designate by notice in the Gazette,
 - (d) a voluntary organisation in any other Member State whose purpose is to protect the interests referred to in paragraph (b) of this definition in accordance with the criteria laid down by their national law,
 - (e) any qualified entity from a Member State included in the list of qualified entities as published in the Official Journal of the European Union;
- "registered consumer association" means a consumer association registered in accordance with Part IV of this Act;
- "services" includes the provision, in the course of or in furtherance of a trade, business, craft or profession, of any kind of educational, professional or instruction courses, facilities for entertainment, amusement, recreation, sports and cultural activities, beauty, health and nutrition-related programmes, hospital and nursing services, accommodation and analogous facilities, of any description, and the performance, in furtherance of a trade,

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business, craft or profession of any other type of work or action in return for a fee or reward;

"trader" means -

(i) any person, including any body corporate or incorporate who in relation to any transactions or other matters covered by this Act or regulations made thereunder is acting for purposes relating to his trade, business, craft or profession;

(ii) any public body, whether corporate or unincorporate, which provides goods or services to consumers for a fee;

Cap. 13. (iii) any person to whom article 4 of the Commercial Code applies:

Provided that the Minister after consulting the Council may from time to time by Order published in the Gazette, designate as a "trader" for all or any purposes of this Act, any category or class of persons and any body corporate or incorporate whether established by law or not. Any Order made by the Minister as aforesaid may by like Order be amended, substituted or revoked;

"terms" includes any condition or requirements in any contract, notice, guarantee or other statement, whether these are given verbally or in writing;

"Tribunal" means a Consumer Claims Tribunal set up under Part

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III of this Act.

PART II

Amended by:

VI. 2011.76,

Director General (Consumer Affairs) and
the Consumer Affairs Council

Responsibility of
the Director

General.

Amended by:

XV. 2006.4;

II. 2008.5.

Substituted by:

VI. 2011.77.

3. The Director General shall be responsible for the administration and enforcement of this Act and for this purpose he shall exercise the responsibilities vested in the Office for Consumer Affairs by article 17 of the Malta Competition and Consumer Affairs Authority Act, 2011 and of this Act:

Provided that the Director General may delegate any of his powers to any officer or employee of the Authority.

Consumer Affairs

Council.

Amended by:

XXVI. 2000.3;

II. 2008.7;

VI. 2011.75, 78.

4. (1) There shall be established a Council to be designated "the Consumer Affairs Council" having the functions and duties set out in this Act. The Council shall consist of a chairman and five other members, one of whom shall be appointed as deputy chairman.

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(2) The Minister shall appoint:

(a) the chairman and four other members from among persons who, because of their experience, qualifications or activities, the Minister considers as being able to contribute towards the promotion of consumer interests; and

(b) one member who, because of his experience, qualifications or activities, the Minister considers as being able to state the point of view of traders.

(3) One of the members, other than the chairman, mentioned in subarticle (2)(a) shall be appointed after consultation with those consumer associations, if any, registered under Part IV of this Act and the member mentioned in paragraph (b) of the same subarticle shall be appointed after consultation with those constituted bodies which the Minister considers to represent the interests of traders.

(4) The appointed members shall hold office for such term, not being more than three years, as may be specified in their letter of appointment and shall be eligible for re-appointment.

(5) Where the seat of any appointed member is vacated before the expiration of the term fixed in his letter of appointment, the Minister shall appoint another person to replace such member for such term, not being a term of more than three years, as the Minister may determine in his letter of appointment.

(6) The deputy chairman shall act instead of the chairman whenever the chairman is lawfully impeded or is absent from a meeting of the Council.

(7) A person shall not be eligible to be appointed a member of the Council, or to continue to be a member of the Council if such person -

(a) is a member of the House of Representatives; or

(b) is legally incapacitated or interdicted; or

(c) has been declared bankrupt or has made a composition with his creditors; or

(d) has been convicted of, or found guilty of -

(i) any crime affecting public trust; or

(ii) theft; or

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(iii) fraud; or

(iv) knowingly receiving property obtained by theft

or fraud; or

Cap. 37.

Cap. 313.

Cap. 317;

Cap. 454.

(v) any offence or infringement contemplated in this

Act, regulations made thereunder, the Customs

Ordinance, the Trade Descriptions Act, the

Doorstep Contracts Act, the Metrology Act, or

any law repealed by any of the said Acts or

Ordinances or any law replacing the same.

(8) Notwithstanding any other provision of this article the

Minister may at any time terminate the appointment of an

appointed member, if in his opinion such appointed member is unfit

to continue in office or has become incapable of properly

performing his functions.

(9) The Minister shall appoint an officer serving in the public

service to act as non-voting secretary of the Council.

Functions of the

Council.

Substituted by:

VI. 2011.79.

5. It shall be the function of the Council:

(a) to advise the Minister on measures for the promotion and protection of consumer interests;

(b) at the request of the Minister, to undertake or commission any study or research which may be necessary to promote consumer protection;

(c) to monitor the working and enforcement of laws that directly or indirectly affect the consumer in Malta;

(d) to act as a forum for bringing together those public authorities which in the exercise of their functions deal

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with situations of conflict between traders' and consumers' interests or have the responsibility to safeguard the interests of consumers, with a view to establishing a closer relationship of co-operation among the said public authorities in furthering the welfare of consumers;

(e) to monitor the development of consumer associations in Malta, and to draw up and review rules of practice for registered consumer associations for submission to the Minister;

(f) to examine and determine whether a consumer association has the requirements to be a registered consumer association in accordance with this Act; and

(g) to perform any other function or duty that may be assigned to it by the Minister or that may be assigned to the Council under this or any other law.

Conduct of business of Council.

6. (1) Subject to the provisions of this Act, the Council shall regulate its own procedure.

(2) The Council shall meet as often as necessary but in no case less frequently than once every calendar month. Meetings shall be convened by the chairman or in his absence the deputy chairman, either on his own initiative, or at the request of three other members of the Council.

(3) A quorum at a meeting of the Council shall be constituted by the chairman, or in his absence the deputy chairman, and three other members.

(4) Decisions of the Council shall be taken by majority of votes of the members present and voting, the chairman shall have an original vote and in the event of equality of votes a second or casting vote.

(5) The Council may act notwithstanding any vacancy among its members.

(6) Any member of the Council who in any matter before the

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Council has any interest in conflict with his office as member of the Council shall disclose the nature of his interest and withdraw from any meeting of the Council during which the matter is discussed. Any such disclosure shall be recorded in the minutes.

Power to make regulations.

Substituted by:

XXVI. 2000.4.

Amended by:

L.N. 425 of 2007;

II. 2008.8;

VI. 2011.75, 80.

7. (1) The Minister may, after consulting the Council, make regulations about any matter relating to consumer affairs in order to give fuller effect to the provisions of this Act, and in particular, but without prejudice to the generality of the aforesaid, may prescribe regulations -

(a) in relation to any aspect concerning the provision of any service, or the sale or hire of any goods offered or supplied to consumers; establishing minimum service standards and price indication requirements with regard to any such goods or services, and laying down any other requirements in order to improve price transparency and consumer information, and to promote easier comparison between different goods or services offered to consumers;

(b) establishing rules of practice for registered consumer associations;

(c) regulating advertising and similar practices in order to ensure that advertising and similar practices are fair and that they do not take undue advantage of consumers;

(d) regulating trading stamps schemes, gift schemes, special offers, sale promotional activities and other similar schemes, arrangements and activities, by



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whatever name described or designated, connected with, ancillary or related to the provision of any service or the sale or hire of any goods to consumers and other consumer transactions, including schemes involving the use and promotion of coupons, units, tokens, vouchers, points, stamps or any other form of reward, gift, membership, incentive, inducement or other benefit, whether in cash or in kind, and whether exchangeable, redeemable or otherwise, issued to or distributed to consumers in connection with, whether directly or indirectly, the purchase or hire of goods or services or other consumer transactions;

(e) to regulate distance selling arrangements and the conclusion of agreements where the consumer and the trader are at a distance from each other, and for this purpose to set out the procedure for concluding distance selling agreements, to provide for the inclusion or exclusion of particular terms and conditions, to establish a cooling-off period for consumers, to lay down thresholds and exemptions, and to establish minimum consumer rights, and to introduce measures to make offers for such agreements more transparent and informative, and to regulate any other aspect of distance selling; and

(f) to regulate consumer credit offers and the conclusion of agreements for the provision of credit terms and facilities by traders or other persons to consumers in the course of a trade, business, craft or profession in relation, directly or indirectly, to the sale or offer of goods, immovable property or services, to lay down the form and procedure for making consumer credit agreements, to stipulate and regulate the terms and conditions that may or may not be adopted in such agreements, to lay down thresholds and exemptions, the method of calculating the cost of credit, advertising, and other measures considered necessary

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or appropriate to establish minimum rights for debtors and to make credit offers more transparent and informative, and to regulate any other aspect of consumer credit arrangements.

(2) Regulations made under this section may also provide for the assignment of power and authority to the Director General to control, monitor, keep under review or prohibit any scheme, agreement, activity or arrangement, including the power to authorise, require a licence, suspend, restrict and to order the amendment, prohibition, suspension, withdrawal or cancellation of any particular scheme, agreement, activity or arrangement, or of a particular class or category thereof, and to impose any conditions and requirements in connection therewith.

(3) Regulations made under this article may provide that any person who contravenes any provision of the regulations, shall either -

(a) be guilty of an offence punishable on conviction by a fine (multa) not exceeding forty-seven thousand euro (€47,000), or

(b) be guilty of an infringement punishable by an administrative fine not exceeding forty-seven thousand euro (€47,000),

and in any case, different penalties may be prescribed for different offences and infringements.

Power to issue guidelines.

Added by:

II. 2008.9.

Amended by:

VI. 2011.75.

7A. The Director General may from time to time, after consultation with the Consumer Affairs Council, issue guidelines to provide general guidance on the interpretation of the provisions of this Act.



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Public warning statements.

Amended by:

XXVI. 2000.5;

VI. 2011.75, 81.

8. (1) The Director General may make or issue a public statement identifying and giving warnings or information about any of the following:

(a) goods that are unsatisfactory or dangerous and persons who supply those goods;

(b) services supplied in an unsatisfactory manner and persons who supply those services;

(c) trading practices detrimental to the interests of consumers and persons who engage in such practices;

and

(d) any other matter that adversely affects or may adversely affect the interests of consumers in connection with the acquisition by them of goods or services from traders.

(2) When making a statement as is referred to in subarticle (1), the Director General shall adhere to the principles of fairness and objectivity.

(3) The Government, the Director General and any public officer acting on the instructions or authority of the Director General, shall be exempt from any liability for acts done in good faith in pursuance of this article by the Director General or any public officer as aforesaid. Such exemption shall extend to all persons publishing, printing, recording, broadcasting or communicating such information by any means whatsoever.

Name of Council or Office not to be used in advertisement.

Amended by:

XXVI. 2000.6;

L.N. 425 of 2007;

VI. 2011.75, 82.

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9. (1) Without prejudice to any arrangements made in terms of article 9A, a trader shall not, without the written consent of the Director General, make or cause to be made any representation in any visual or aural form, either specifically or by implication, to the effect that:

(a) any goods or services supplied by any trader have the approval of the Authority, Office or Council; or

(b) any activity carried out by any trader has the approval, or is conducted with the co-operation or assistance of the Authority, Office or Council.

(2) Where a trader's name, tradename, trademark, or the designation of any goods or services provided or supplied by a trader, appears in relation to a representation referred to in subarticle (1), that trader shall be deemed for the purposes of this article to have caused the representation to be made unless he proves that the representation was made without his knowledge or connivance.

(3) A trader convicted under this article shall be liable to a fine (multa) of not less than one hundred and twenty euro (€120) and not more than two thousand three hundred and fifty euro (€2,350).

Approval of codes of conduct by the Director General and use of official symbol.

Added by:

VI. 2011.83.

9A. (1) In promoting good trading practices, the Director General shall, with the approval of the Board, make arrangements for approving codes of conduct and may, in accordance with these arrangements, give his approval to or withdraw his approval from any code of conduct.

(2) Any such arrangements must specify the criteria to be applied by the Director General in determining whether to give approval to or withdraw approval from a code of conduct.

(3) Any such arrangements may in particular:

(a) specify the type of code of conduct that may be the subject of an application to the Director General for

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approval indicating the requisite features of the code of conduct, including the persons who are, or are to be subject to the code of conduct, the manner in which it is, or is to be operated and the persons responsible for its operation; and

(b) provide for the use in accordance with the arrangements of an official symbol intended to signify that a code of conduct is approved by the Director General.

(4) The Director General shall publish any arrangements under subarticle (1) in such manner as he considers appropriate.

(5) For the purposes of this article "code of conduct" shall have the same meaning assigned to it in article 51A.

Liability of trader for acts of his employees, etc.

Amended by:

II. 2008.10.

10. (1) Where an offence or an infringement under this Act or any regulation made thereunder is committed by an employee or other person acting on behalf of a trader, the trader shall also be guilty of the offence or the infringement committed by the employee or other person acting on his behalf unless he can prove that he has exercised all reasonable diligence to prevent the commission of the offence or the infringement by the employee or other person acting on behalf of the trader.

(2) Where an offence or an infringement of any provision of this Act or any regulation made thereunder is committed by a body corporate and is proved to have been committed with the consent or involvement of or to be attributable to any gross negligence on the part of a person being a director, manager, secretary or other officer however so described of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be liable to be proceeded against and punished as if he was responsible for the said offence or infringement.

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Confidentiality.

Amended by:

L.N. 425 of 2007;

VI. 2011.75, 84.

11. (1) A person who is or was at any time a member of the Council shall not, save in the course of his duty or functions under this Act or any other law, or where it is competent to him to do so by reason of a provision of this Act or any other law, directly or indirectly communicate any information that came to his knowledge as a consequence of his holding that appointment or position.

(2) Without prejudice to any other liability under any other law, any person who acts in breach of this article shall be liable on conviction to a fine (multa) of not less than one hundred and twenty euro (€120) and not more than two thousand and three hundred fifty euro (€2,350), or to a term of imprisonment not exceeding six months, or to both such fine and imprisonment.

Undertakings.

Amended by:

XXVI. 2000.7;

XV. 2006.5;

L.N. 425 of 2007.

II. 2008.11;

VI. 2011.75, 85.

Cap. 317.

12. (1) Upon the conclusion of an investigation, where it appears to the Director General that a trader has engaged in conduct that constitutes a breach of, or failure to comply with, any regulations made under article 7 or under the provisions of article 9, or a breach or a failure to comply with the provisions of articles 44 to 47, 51 to 53 or with the provisions of the Doorstep Contracts Act, the Director General may, at his discretion, instead of issuing a

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decision finding an infringement or instituting proceedings against the trader and, or issuing a compliance order, caution the trader and seek an undertaking in writing from the trader that he shall refrain from the conduct or practice specified in the undertaking for such period not exceeding three years, as may be specified by the Director General. The undertaking shall contain such other terms and conditions as may be agreed, including, where circumstances so warrant, the provision of compensation for aggrieved consumers.

(2) Where the Director General deems it appropriate, he may order the publication of the said undertaking in at least two daily newspapers, and that the relative expenses shall be borne by the trader.

(3) The Director General shall maintain a register of undertakings made under this article, which register shall be kept at the principal office of the Office and the register may be seen by any person at such times as may be established by the Director General.

(4) A trader who acts in contravention of an undertaking made in accordance with this article shall, without prejudice to any liability arising under this or any other law, be guilty of an infringement against this article, and shall in any case remain bound by the undertaking for the remaining period of its term.

Power to carry out investigations.

Added by:

II. 2008.12.

Amended by:

VI. 2011.75.

12A. In order to ensure the observance of the provisions of this Act and any regulations made thereunder, the Director General shall have power to carry out investigations of his own motion or upon a reasonable allegation in writing of a breach of the provisions of this Act and any regulations made thereunder.

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Complaints of general interest.

Added by:

VI. 2011.86.

12B. (1) Without prejudice to article 12A, a qualified entity may also make a complaint to the Director General that with respect to goods and services -

(a) the structure of the market concerned or any aspect of that structure;

(b) any conduct, whether or not in the market concerned, of one or more than one person who supplies or acquires goods or services in the market concerned; or

(c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services,

is or appears to be significantly harming the interests of consumers.

(2) The Director General must, within forty-five days after the day on which he receives the complaint, publish a response stating how he proposes to deal with the complaint, and in particular:

(a) whether he has decided to take any action, or to take no action, in response to the complaint; and

(b) if he has decided to take action, what action he proposes to take.

(3) The response must state the reasons of the Director General for his proposals.

(4) The Director General -

(a) shall issue guidance as to the presentation by the qualified entity of a reasoned case for the complaint;

and

(b) may issue such other guidance as appears appropriate for the purposes of this article.

Criminal proceedings.

Amended by:

XXVI. 2000.8;

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II. 2008.13;

VI. 2011.75, 87.

13. (1) When investigations in terms of article 12A relate to an offence under this Act or any regulations made thereunder, criminal proceedings may only be instituted at the instance of the Director General.

(2) In any proceedings referred to in subarticle (1), the Director General, or an official of the Office duly authorised to act in his stead, may, notwithstanding any provision of any other law, conduct the prosecution before the Court of Magistrates.

(3) Should the evidence of the Director General or the official conducting the prosecution be required as part of the case of the prosecution, he shall be heard before any other witness, unless the necessity of his giving evidence arises later in the proceedings.

Compensation orders.

Amended by:

L.N. 425 of 2007;

II. 2008.14;

VI. 2011.88.

14. (1) Upon the request even verbal of the aggrieved consumer or of the prosecuting officer on his behalf, the court shall where the defendant is convicted for an offence against a provision of the Act or against any regulation made under article 7, make a compensation order whereby defendant is ordered to pay to the aggrieved consumer as full or partial compensation -

(a) a sum not in excess of six hundred euro (€600) for any pecuniary loss, and

(b) a sum of not less than thirty five euro (€35) and not more than seven hundred and fifty euro (€750) as moral damages for any pain, distress, anxiety and inconvenience,

suffered by the aggrieved consumer as a result of the offence or arising therefrom.

(2) Any compensation ordered under subarticle (1)(a) shall be

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reduced from any amount which may be given in a judgment by a court or tribunal of civil jurisdiction with regard to the same matter.

(3) A request for the making of a compensation order shall not be made where such damages have been settled by agreement with the trader or where the aggrieved consumer has instituted a claim before a court or a tribunal of civil jurisdiction against the defendant in respect of the same matter.

(4) A compensation order made under this article shall be without prejudice to the right of the aggrieved consumer to institute civil action for the recovery of any sum due to him as damages so however that the sum covered by the compensation order shall be reduced from the total sum due by the defendant as damages.

(5) A compensation order made under this article shall be subject to appeal by the defendant in the same manner as an appeal from sentence.

Cap. 12.

(6) When the judgment in which a compensation order is made has become *res judicata*, the said compensation order shall be deemed to be an executive title for the purposes of the Code of Organization and Civil Procedure and shall be enforceable in the same manner as if it were a judgment of the Court of Magistrates (in each case in its inferior civil jurisdiction) of the island where the court making the compensation order is situate.

Administrative proceedings.

Added by:

II. 2008.15.

Amended by:

XIV. 2009.2;

VI. 2011.75.

14A. (1) Upon commencing investigations in terms of article 12A concerning an alleged infringement of a provision of this Act or of any regulations made thereunder, the Director General shall write to the person investigated informing him of the nature of the alleged infringement and granting the person concerned a period of

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not less than fifteen days as the Director General may determine to be appropriate in the circumstances during which period the person concerned may make his submissions to the Director General:

Provided that the Director General may:

(a) require the person concerned to furnish evidence as to the accuracy of factual claims in relation to a commercial practice if, taking into account the legitimate interest of the person concerned and any other party to the proceedings, such a requirement appears appropriate on the basis of the circumstances of the particular case; and

(b) consider factual claims as inaccurate if the evidence demanded in accordance with paragraph (a) of this proviso is not furnished or is deemed insufficient by the Director General.

(2) Where, upon the conclusion of an investigation, having considered the submissions, if any, made to him under subarticle (1), it results to the Director General that a breach of a provision of this Act or of any regulations made thereunder has occurred, he shall issue a decision finding an infringement, giving his reasons therefor:

Provided that, the Director General may, instead of a decision finding an infringement, seek an undertaking from the trader in terms of article 12.

(3) A copy of the decision issued under subarticle (2) shall be served upon the person against whom the decision is taken.

Interim measures.

Added by:

II. 2008.15.

Amended by:

VI. 2011.75, 89.

14B. (1) Notwithstanding the provisions of article 14A, in cases of urgency due to the risk of immediate and serious harm to the collective interests of consumers, the Director General may,

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before the conclusion of an investigation, on the basis of a prima facie finding of an infringement, order interim measures to remedy the situation in advance of reaching a final decision, giving his reasons therefor:

Provided that the person against whom such measures are contemplated, shall be given a reasonable opportunity to state his views and propose any remedies.

(2) Measures taken under subarticle (1) shall have immediate effect and shall remain in force for the period of time stipulated therein unless they are previously revoked by the Director General or unless the matter under investigation has been determined by the Director General before the said period, and may be renewed in so far this is necessary and appropriate.

(3) Orders prescribing interim measures in terms of this article shall be served upon the person under investigation.

(4) Any person who acts contrary to an interim measure issued by the Director General, shall be guilty of an infringement against this article.

(5) A person upon whom an interim measure has been served, may within fifteen days of the notification of the measure, appeal from the said measure by application before the Appeals Tribunal: Provided that such appeal shall not have the effect of suspending the interim measure.

(6) The application of appeal shall be notified to the Director General who shall not later than fifteen days from such notification file his reply thereto.

(7) The Appeals Tribunal may confirm or revoke the interim measure or change it on any terms or conditions the Appeals Tribunal may consider appropriate.

Prime Minister may extend operation of articles 10, 12, 12A, 13, 14, 14A and 14B and Parts X, XI and XII to other laws.

Amended by:

II. 2008.16;

VI. 2011.75.

15. (1) The Prime Minister may by order in the Gazette direct

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that the provisions of articles 10, 12, 12A, 13, 14, 14A and 14B and Parts X, XI and XII shall apply to offences and, or infringements under any other law administered by the Director General, or under any law whereby maximum prices for goods or services are fixed, or whereby minimum standards are fixed for goods or services.

(2) The provisions of articles 10, 12, 12A, 13, 14, 14A and 14B and Parts X, XI and XII shall apply to offences and, or infringements under the laws referred to in article 111.

PART III

Consumer Claims Tribunal

Establishment of tribunals.

16. (1) There shall be two tribunals to be styled "the Consumer Claims Tribunal (Malta)" and "the Consumer Claims Tribunal (Gozo)" respectively.

(2) The Consumer Claims Tribunal (Malta) shall, subject to the provisions of subarticle (3), have jurisdiction to hear and determine consumer claims where the transaction to which the claim refers has taken place in Malta, and shall hold its sittings in such place or places in Malta as the Minister may by order in the Gazette determine.

(3) The Consumer Claims Tribunal (Gozo) shall have jurisdiction to hear and determine consumer claims where the transaction to which the claim refers has taken place in the Islands of Gozo or Comino, and shall hold its sittings in such place in the Islands of Gozo and Comino as the Minister, in consultation with the Minister responsible for Gozo Affairs, may by order in the Gazette determine.

(4) For the purposes of subarticles (2) and (3) a transaction shall be deemed to have taken place:

(a) in the case of a sale or a service which has been concluded or provided on the premises of the trader, in the island where those premises are situate;

(b) in the case of a sale or a service which has been concluded or provided outside the premises of the

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trader:

(i) where the sale or the service was contracted by telephone, fax, correspondence or by any mechanical or electronic means of communication, and the trader did not himself

approach the consumer and offer the sale of the goods or the supply of the service, in the island where the premises of the trader are situated;

(ii) in all other cases in the island where the goods were delivered or the service provided; so

however that where the goods were delivered or the service provided partly in the Island of Malta and partly in the Island of Gozo or in the Island of Comino, or has taken place during a voyage between the Island of Malta and the Island of Gozo or the Island of Comino, both tribunals shall have jurisdiction.

Cap.12.

(5) Where in accordance with the provisions set out in subarticle (4), or in accordance with any rules made under article 27, it cannot be determined which tribunal has jurisdiction, the provisions of the Code of Organization and Civil Procedure to determine conflict of jurisdiction between the Court of Magistrates (Malta) in its civil jurisdiction and the Court of Magistrates (Gozo) in its inferior civil jurisdiction, shall *mutatis mutandis* apply.

Arbiters.

Amended by:

II. 2008.17.

17. (1) Each tribunal shall be presided by an arbiter sitting alone:

Provided that more than one arbiter may be appointed to sit in any of the said tribunals, but only one arbiter shall sit in any one case.

(2) Arbiters shall be appointed by the Prime Minister. No person

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shall be qualified to be appointed arbiter unless such person -

- (a) is a citizen of Malta over the age of thirty years; and
- (b) holds the warrant and has practised the profession of advocate in Malta for a period of at least five years.

(3) A person shall be disqualified to be appointed arbiter if such person -

- (a) is a member of the House of Representatives; or
- (b) is a member of a Local Council; or
- (c) is a trader; or
- (d) has been convicted of any of the offences or found guilty of any of the infringements referred to in article 4(7)(d)(v).

(4) Arbiters shall receive such remuneration as the Prime Minister may by notice in the Gazette determine, and shall not be precluded from the exercise of their respective profession.

(5) Arbiters shall be appointed for a term of three years and shall be eligible to be re-appointed, for a further term or terms of three years each.

(6) In the exercise of his functions under this Act an arbiter shall not be subject to the control or direction of any other person or authority and may not be removed from office except by the Court of Appeal on an application for that purpose by the Prime Minister on the grounds of misbehaviour or inability to perform his functions by reason of infirmity of body or mind.

(7) The remuneration due to arbiters and the expenses in connection with the administration of the tribunals shall be paid out of the Consolidated Fund without the necessity of any further appropriation.

Abstention or challenge of arbiters.

18. An arbiter shall abstain and may be challenged in the same circumstances as a judge of the superior courts.

Oath taken by arbiter.

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19. Every person appointed as an arbiter shall not assume the functions of his office unless and until he has taken before the Attorney General an oath to examine and decide the cases brought before him without delay, with impartiality, and equity according to law.

Jurisdiction of the tribunal.

Amended by:

XXVI. 2000.9;

L.N. 425 of 2007;

VI. 2011.90.

20. (1) A tribunal shall have jurisdiction to hear and determine claims made by consumers against traders where the value of the claim, exclusive of interests and costs, does not exceed three thousand five hundred euro (€3,500), and where the claim relates to, arises out of or concerns, whether directly or indirectly -

(a) the purchase or hire of goods by a consumer from a trader; or

(b) the provision of services by a trader to a consumer.

(2) The jurisdiction of a tribunal shall not be exclusive, and it shall be at the option of the consumer whether to bring an action against a trader before a tribunal or before the ordinary courts; so however that -

(a) where an action has been brought before a tribunal by a consumer, it shall not be competent for the consumer to bring an action arising out of the same claim also before the ordinary court; and

(b) where an action has been brought before the ordinary courts by a consumer, or in a case brought by a trader against a consumer and the consumer sets forth a counter-claim, it shall be lawful for all the parties to the action, where the claim and the counter-claim if any are within the jurisdiction of a tribunal, by a joint note filed in the records of the case to request that court to transfer the case to a tribunal. Thereupon the

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ordinary court shall through the Registrar transfer a copy of the records of that case to the tribunal and shall refrain from taking further cognisance of the case. Registry costs in respect of the case before the ordinary courts shall in any such case be waived, and unless the parties otherwise agree in the note aforesaid, costs shall be determined in a like manner as if the case was withdrawn by the plaintiff:

Provided that a case shall not be transferred to a tribunal where the value of the claim or counter-claim determined as provided for in subarticle (1) exceeds three thousand five hundred euro (€3,500); and (c) it shall be lawful for a trader to make a counter-claim against a consumer arising from a matter referred to in subarticle (1) before the tribunal in an action brought against him by a consumer.

Determination of disputes before a tribunal.

Amended by:

L.N. 425 of 2007;

VI. 2011.91.

21. (1) A tribunal shall determine the issues in dispute in any claim or counter-claim before it according to the substantive merits and justice of the case, and in accordance with equity:

Provided that any question of prescription shall be determined according to law.

(2) A tribunal may, when determining the issues in dispute in any claim or counter-claim before it, order the trader to pay to the consumer a sum of not less than thirty-five euro (€35) and not more than five hundred euro (€500) as moral damages for any pain, distress, anxiety and inconvenience.

Appeals.

Amended by:

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XXVI. 2000.10;

VI.2001.26;

II. 2008.18;

VI. 2011.92.

22. (1) An appeal made under subarticles (2) and (3) shall lie from a decision of a tribunal by means of an application filed within twenty days from the date of the decision -

(a) in the case of an appeal from the Consumer Claims Tribunal (Malta) to the Court of Appeal (Inferior Jurisdiction) sitting in Malta; and

(b) in the case of an appeal from the Consumer Claims Tribunal (Gozo) to the Court of Appeal (Inferior Jurisdiction) sitting in Gozo.

(2) An appeal shall lie in the following cases:

(a) on any matter relating to the jurisdiction of the Tribunal; or

(b) on any question of prescription; or

(c) where the tribunal has acted contrary to the rules of natural justice and such action has prejudiced the rights of the appellant.

(3) A right of appeal on all grounds shall also lie where the amount of the claim in dispute, calculated in terms of article 20(1), exceeds one thousand two hundred euro.

(4) Where the Court of Appeal finds that the grounds for appeal are justified it shall quash the decision of the Tribunal and shall itself determine the original claim and any counter-claim in accordance with the provisions of article 21.

(5) The Court of Appeal may, if it considers the application frivolous or vexatious, dismiss the appeal and order the appellant to pay a penalty which shall not be less than two hundred and thirty euros and not exceeding one thousand one hundred and seventy euro.

Cap. 12.

(6) The amount of the penalty shall be due and owing to the Government as a civil debt, liquidated and certain, and may be collected by the Registrar. The order referred to in subarticle (5)

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shall constitute an executive title within the meaning and for the purposes of Title VII of Book Second of the Code of Organization and Civil Procedure.

(7) The Minister responsible for justice may by regulations under this subarticle establish the fees payable in the registry of the courts in relation to the filing of judicial acts in connection with an appeal under this article:

Cap. 12.

Provided that where no such fees have been so established the fees contained in Schedule A to the Code of Organization and Civil Procedure shall apply.

Cap. 12. (8) The board established under article 29 of the Code of Organization and Civil Procedure may make rules governing appeals under this article.

Procedure.

Amended by:

XXVI. 2000.11;

VI. 2011.75;

IX. 2011.64.

23. (1) Subject to the provisions of any rules made in accordance with article 27 and to the provisions of subarticle (2), an arbiter shall regulate the proceedings before a tribunal as he thinks best suited to the ends of justice in accordance with the rules of natural justice.

(2) Subject to any rules referred to in subarticle (1) hereof, an arbiter -

(a) shall ensure that a case is decided as far as is reasonably possible on the same day of the hearing;

(b) shall inform himself in any manner he thinks fit and shall not be bound by the rules of best evidence or the rules relative to hearsay evidence if he is satisfied that the evidence before him is sufficiently reliable for him to reach a conclusion on the case before him;

(c) shall refrain as far as possible from appointing

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technical referees to give expert evidence, and shall where experts are appointed make out a list of points upon which the expert is to give evidence;

(d) shall not be bound to give extensive reasons for his decisions but it shall be sufficient for him to list out the main points upon which his decision is based;

(e) shall have the same power as a magistrate sitting in a Court of Magistrates (Malta) in its civil jurisdiction or in the Court of Magistrates (Gozo) in its inferior civil jurisdiction and in particular shall have power to summon witnesses and to administer an oath to witnesses; and

(f) shall ensure evidence before the Tribunal shall in all cases be tendered on oath.

(3) No proceedings before a tribunal shall be invalid because of any non-observance of any formalities if there has been substantial compliance with the rules.

(4) (a) A claim shall, before being presented before a tribunal, be referred by the party making the claim to the Director General or a registered consumer association who shall try to bring the parties into an agreement on the issues in dispute.

(b) If no agreement is reached on all the issues in dispute within fifteen working days from when the claim was referred to the Director General or the registered consumer association, as the case may be, by the party, that party may then present its claim before the tribunal.

(5) Where the Director General is in receipt of a claim referred to him by the Malta Communications Authority where such a claim was submitted to that Authority by an aggrieved end-user in relation to a communications service however so described falling within the remit of the Authority, then the Director General shall act on the basis of the claim forwarded to him by the Authority without the need of requiring the end-user concerned to submit the claim again to the Director General:

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Cap. 418.

Provided that for the purposes of this subarticle,
"communications service" means any communications service as is
regulated in accordance with the provisions of the Malta
Communications Authority Act.

Cap. 108.

(6) Witnesses shall be paid fees in accordance with the
Witnesses (Fees) Ordinance.

Cap. 189. (7) The provisions of the Judicial Proceedings (Use of English
Language) Act shall apply to a tribunal.

Applicability of this Part.

24. (1) The provisions of this Part shall apply to claims
arising from sales made or services provided after the coming into
force of this article, and it shall be a condition of any sale or
provision of service after the coming into force of this article that
the provisions of this Part shall apply to any claims arising
therefrom:

Provided that it shall be lawful for a consumer and a trader
to agree that this Part shall also apply to sales made, or services
provided, before the coming into force of this article.

(2) It shall not be lawful for the parties to a transaction to
which subarticle (1) refers, to derogate from any right given to a
consumer under this Part.

Costs and enforcement.

Amended by:

XXVI. 2000.12;

L.N. 425 of 2007;

VI. 2011.93.

25. (1) In any award the arbiter shall determine the costs that
any of the parties is to pay to the other and unless special
circumstances so warrant, the losing party shall be ordered to pay
the costs of the party in whose favour the decision is awarded:

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Provided that where the arbiter is satisfied that a claim presented before the Tribunal or any defence offered in respect thereof is vexatious or frivolous, he may order the claimant or the defendant, as the case may be, to pay to the other party a penalty of not more than one hundred and twenty euro (€120). Any such order shall be motivated and enforceable in the same manner as a decision of the Tribunal.

(2) Costs shall be limited to expenses made directly in connection with the case by the party in whose favour the payment of costs is awarded:

Provided that in no case shall costs be awarded in connection with any expenses consisting of legal fees or any fees however so called paid by any of the parties to advocates, legal procurators or any other person assisting the parties before the tribunal.

Cap.12.

(3) A decision of the Tribunal which has become *res judicata* may be enforced, depending on the residence of the person against whom enforcement is sought, by the Court of Magistrates (Malta) or by the Court of Magistrates (Gozo), as an executive title under the Code of Organization and Civil Procedure:

Provided that the Court fees payable in respect of any warrant issued for the purpose of enforcing a decision of the Tribunal shall amount to one-half of the court fees applicable in respect of warrants issued for the purpose of enforcement of judgments of the Court of Magistrates referred to herein.

Failure to comply with decisions.

Added by:

II. 2008.19.

Substituted by:

VI. 2011.94.

25A. The Director General shall monitor closely the decisions of the Tribunal to identify traders whose conduct on the market may be in breach of the Act or regulations made thereunder or who may

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not be honouring the decisions of the Tribunal or of the Court of Appeal to the detriment of consumers and may take any action under this Act or regulations made thereunder against such traders to address any consumer harm that could be ensuing from the traders' behaviour:

Provided that any action by the Director General under this article shall be without prejudice to the obligation of the trader to comply with the decision of the Tribunal or of the Court of Appeal.

Registry, secretary and deputy secretary.

Amended by:

VI. 2011.95.

26. (1) There shall be a registry for each tribunal.

(2) The records of each tribunal shall be accessible to all persons, and copies shall be given on payment of the prescribed fee to any person on request.

(3) The acts and records of a tribunal shall be deposited and kept in any place as the Minister may, with the concurrence of the Minister responsible for justice, by order in the Gazette establish.

(4) The Minister shall appoint a secretary to each tribunal.

(5) The secretary shall subject to such rules as may be made under this Part, have the same functions in relation to the tribunal as the Registrar of the Courts and the Archivist of the Courts have in relation to the superior courts.

(6) The Minister shall also appoint deputy secretaries who shall, subject to rules made as aforesaid, have such duties as are assigned to them by the secretary in general and in particular as are performed by deputy registrars in the superior courts.

(7) Before assuming the functions of their office, a secretary and a deputy secretary shall take and subscribe to an oath before a Commissioner for Oaths to perform their duties fairly and impartially according to law.

27. The Minister may, with the concurrence of the Minister Rules.

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responsible for justice, make rules for the better functioning of the tribunals established under this Part and may without prejudice to the generality hereof make rules:

- (a) setting out the procedure before the tribunals or in appeals from the tribunals;
- (b) establishing the forms that are to be used in proceedings before the tribunals or in appeals from the tribunals;
- (c) establishing rates of costs in proceedings before the tribunals;
- (d) establishing the fees that may be due to the registry of the tribunal;
- (e) setting out the duties of the secretaries and deputy secretaries; and
- (f) prescribing anything that may or is to be prescribed in accordance with this Part.

PART IV

Consumer Associations

Requirements for registrations.

Amended by:

XXVI. 2000.13.

28. A registered consumer association is a consumer association which satisfies the Council that it complies with the following requirements:

- (a) that the association has a minimum paid up membership of one hundred members of majority age who are citizens of Malta or permanent residents in Malta;
- (b) that the statute of the association states in substance that the principal object of the association is to promote consumer protection, and to guide, inform and educate consumers;

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(c) that the statute makes provision for the association to be managed by persons freely elected by the members of the association in an election which is held at least once every calendar year;

(d) that the association does not have the making of profit as one of its objects; and

(e) that the association is independent of any other association, organisation or grouping whose principal object is not the protection of consumers.

Application for recognition.

29. (1) Any consumer association wishing to be recognised as a registered consumer association shall submit to the Council the following:

(a) an application on the appropriate form issued under the authority of the Council;

(b) a complete updated copy of its statute duly certified by the person who holds the most senior executive post with the association;

(c) a list of the association's members including their respective addresses and identity card numbers; and

(d) the official address of the association.

(2) The Council shall at its earliest opportunity examine and verify whether the association satisfies the requirements laid down in article 28. Where these requirements are satisfied, the Council shall register the applicant as a registered consumer association, and shall issue a certificate to the association confirming the registration of the said association and the date thereof.

(3) Where the Council determines that an association does not satisfy the requirements for registration, it shall within fourteen days from the date of its decision give notice thereof in writing to the applicant giving the grounds for such a decision.

(4) The Council may refuse to register a consumer association under a name or designation which it considers to be offensive or otherwise undesirable.

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(5) A certificate issued by the Council to the effect that a particular consumer association is a registered consumer association which complies with all the requirements laid down under subarticle (1), shall be valid and conclusive evidence of the fact for all intents and purposes of law.

(6) No fees shall be charged in connection with the registration of a consumer association with the Council.

Register of consumer associations.

30. (1) The Council shall keep a register of all registered consumer associations, stating their names, dates of registration, number of members and any other particulars the Council may deem appropriate.

(2) The register shall be open to inspection by any person free of charge at any time and place as may be determined by the Council:

Provided that the identity of the members of a registered consumer association shall not be open to public scrutiny.

Obligation to keep records of members.

31. Every registered consumer association shall keep a fully updated record of the names, addresses and identity card numbers of its members.

Obligation to submit information to Council.

32. (1) A registered consumer association shall submit to the Council all such returns and information on its membership and activities as the Council may from time to time require. Without prejudice to the foregoing, each registered consumer association shall in every calendar year not later than the end of March lodge with the Council a return of its membership as at the 31st December of the previous year.

(2) A registered consumer association shall provide the

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Council with a copy of any amendments to its statute, which copy must be duly certified by the person holding the most senior executive post with the association. Any such amendment must be notified to the Council within fourteen days of its approval by the said association.

Council to publish annual list.

33. As soon as practicable after the lapse of each successive calendar year but not later than the end of May of each year, the Council shall publish for general information in the Gazette a list of the registered consumer associations duly registered as on the 31st December of the previous year.

False or misleading statement, etc.

Amended by:

L.N. 425 of 2007;

VI. 2011.96.

34. Any person who knowingly or recklessly makes a false or misleading statement or declaration or otherwise gives any false or misleading information to the Council under any of the provisions of this Part shall, on conviction, be liable to a fine (multa) of up to two thousand three hundred and fifty euro (€2,350) or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

Exemption and privileges.

35. A registered consumer association shall enjoy the rights, benefits, privileges and exemptions granted by this Part for so long as it remains so registered and continues to comply with the requirements of this Part.

Exemption from liability.

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Amended by:

II. 2008.20.

36. (1) Notwithstanding the provisions of any other law, a registered consumer association and any of its officials acting on its behalf shall be exempt from any liability or responsibility whether civil or criminal, in respect of any publication, statement or other communication or activity, which is bona fide and is intended solely for the better information, education or protection of consumers. Such exemption shall extend to all persons publishing, printing, recording, broadcasting or communicating such information by any means whatsoever.

(2) For the purposes of subarticle (1), a publication, statement, communication or activity shall be deemed to be bona fide when it is not made or undertaken recklessly or maliciously, adheres to the principles of fairness and objectivity, and is not in contravention of any rules of practice made in accordance with article 7(1)(b).

(3) Any person alleging bad faith by a registered consumer association shall have the burden of proving such allegations.

Registered consumer associations and prosecutions.

Amended by:

VI. 2011.75

37. (1) A registered consumer association may in its own name make reports or complaints to the competent authority on any breach of this Act, any law administered by the Director General or any such laws or regulations as the Prime Minister may from time to time determine by notice published in the Gazette.

(2) In any prosecution by the competent authority made following a report or complaint under subarticle (1), a representative of the association shall be called to give evidence on the facts known to the association about the complaint or report and indicate to the court any evidence in respect of the charge of which it may be aware.

(3) In the course of the criminal proceedings made as a result of a report or complaint by the association, an official authorised

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by the association for this purpose shall be entitled to participate and assist in the prosecution of the said offences.

Exemption from income tax.

38. A registered consumer association shall be exempt from the payment of income tax.

Assistance to registered consumer associations.

39. The Minister may, acting on the advice of the Council, grant to any registered consumer associations such assistance and facilities as he may deem fit from time to time in order to enable them to exercise their functions.

Consultation and initiatives with registered consumer associations.

40. (1) The Council may whenever it considers it to be necessary, consult with registered consumer associations on any matter relating to or arising from the supply of goods and services to consumers.

(2) The Council may also undertake initiatives or campaigns jointly with registered consumer associations as it deems fit from time to time.

Cancellation of registration.

Amended by:

II. 2008.21.

41. The Council shall cancel the registration of a registered consumer association in any of the following cases where:

- (a) a request for cancellation is made by the association;
- (b) it is satisfied that the association no longer complies with any of the requirements laid down in article 28;
- (c) for any reason, the statute regulating the association is not in conformity with the provisions of this Part;

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(d) it is satisfied that the association has ceased to exist or to function;

(e) it is satisfied that sufficient proof exists that the registration of the association had been procured by fraud, negligence or serious mistake;

(f) the association or anyone acting on its behalf is convicted under article 34; or

(g) the association has repeatedly acted in breach of any rules of practice made under article 7(1)(b), or has in any matter of gravity acted even once in breach of such rules.

Other consumer associations.

42. Nothing in this Part shall be construed as obstructing or limiting the right of persons to set up associations for the protection and promotion of consumer interests without qualifying in terms of article 28. In such a case an association which is not registered shall not have any right to consultation, assistance or recognition from the Council, or to any other right, privilege or exemption conferred by this Part upon registered consumer associations.

Added by:

XXVI. 2000.15.

PART V

Declaration of Principles

Consumer rights.

Added by:

XXVI. 2000.15.

43. (1) The principles stated in subarticle (2) shall not be directly enforceable in any court or tribunal, but shall be adhered to in the interpretation and implementation of this Act and any regulations made thereunder.

(2) Consumers shall be entitled:

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-
- (a) to have adequate access to basic essential goods and services at reasonable prices and to be able to choose from a diverse range of goods and services;
 - (b) to be protected against goods, production processes and services which are harmful to health;
 - (c) to have adequate access to information about goods or services which is clear, correct and does not mislead;
 - (d) to form and join consumer associations and to have consumer interests represented in the making and execution of government policy, and in the development of goods and services;
 - (e) to protection from unlawful or unfair trading practices;
 - (f) to receive a fair settlement of just claims including adequate compensation for misrepresentation, shoddy goods or unsatisfactory services; and
 - (g) to effective, quick and inexpensive means of redress in disputes they may have with traders.

(3) A consumer may not waive any rights established in his favour by or under this Act.

PART VI

Substituted by:

II. 2008.22.

Unfair contract terms

Prohibited terms.

Added by:

XXVI. 2000.15.

Amended by:

XIV. 2009.3.



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44. (1) It shall be unlawful in consumer contracts to use unfair terms, or terms or combination of terms which are unfair in that they have as an object or effect any of the objects and effects referred to in subarticle (2), and any term prohibited as aforesaid inserted in any consumer contract shall be deemed never to have been so inserted.

(2) The terms referred to in subarticle (1) include terms which have the object or effect of -

- (a) excluding or limiting the liability of a trader by reason of his own fraud or gross negligence or that of his employees or agents, or by reason of any failure to fulfil an obligation constituting one of the fundamental elements of the contract;
- (b) establishing an unreasonably short period for notifying the trader of any defects;
- (c) excluding or limiting the legal rights of a consumer

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against the trader in the event of total or partial nonperformance

or inadequate performance by the trader

of any of his contractual obligations;

(d) prohibiting the consumer from offsetting a debt owed

to the trader against a claim which the consumer may

have against the same trader;

(e) making an agreement binding on the consumer

whereas the provision of services or goods by the

trader is subject to a condition whose realisation

depends solely on the will of the trader;

(f) allowing the trader to retain sums paid by the

consumer if the consumer decides not to conclude or

perform the contract, without providing for the

consumer to receive compensation of an equivalent

amount from the trader where the trader is the party

cancelling the contract;

(g) requiring a consumer who fails to fulfil his obligation,

to pay to the trader as compensation a sum which is

disproportionately high to the value of the goods or

services purchased or hired;

(h) determining the compensation payable by a consumer

who fails to fulfil his obligations, without providing

for compensation of the same magnitude by the trader

who fails to fulfil his;

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- (i) limiting the means of proof which the consumer can use;
- (j) causing the consumer to waive any ground of claim against the trader in the event of a dispute;
- (k) prohibiting the consumer from seeking the cancellation of the contract if the trader fails to fulfil his obligations;
- (l) restricting the right of the consumer to cancel the contract if the trader, in connection with any guarantee or warranty given, does not fulfil his obligation or fails to do so within a reasonable period;
- (m) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
- (n) enabling the trader to alter the terms of a contract unilaterally, without a valid reason which is specified in the contract;
- (o) enabling the trader to alter unilaterally, without a valid reason, any characteristics of the product or service to be provided;
- (p) providing for the price of goods to be determined at the time of delivery by the trader or allowing him to increase the price without in any case giving the consumer the corresponding right to cancel the



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contract if the final price is too high in relation to the price agreed when the contract was concluded;

(q) causing the price to vary by reference to factors depending only on the will of the trader;

(r) giving the trader the right unilaterally to determine whether the goods or services supplied are in conformity with the contract;

(s) giving the trader the exclusive right to interpret any term of the contract;

(t) limiting or eliminating the obligation of the trader to respect commitments undertaken by his agents or employees;

(u) obliging the consumer to fulfil his obligations where the trader does not perform his;

(v) allowing the trader the possibility of transferring all his rights and obligations under the contract where this may serve to reduce the guarantees or warranties for the consumer, without the consent of the consumer;

(w) providing for an immediate and final commitment by the consumer on signature of the contract, with the trader contracting subject to a condition the fulfilment of which depends only on the will of the trader;

(x) permitting the trader to establish or alter unilaterally the period for delivering goods or supplying a service;

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(y) excluding or limiting the legal liability of a trader or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that trader or supplier;

(z) authorizing the trader or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the trader or supplier to retain the sums paid for services not yet supplied by him where it is the trader or supplier himself who dissolves the contract;

(aa) enabling the trader or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;

(bb) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early;

(cc) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the



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contract.

(3) The Minister may, after consulting the Council, by regulations amend, substitute or revoke any of the terms listed in subarticle (2).

(4) The list of terms laid down in subarticle (2) is not an exhaustive list, and accordingly nothing contained in subarticles (1) and (2) shall be construed as limiting or otherwise prejudicing the generality of the provisions of article 45.

(5) In this Part, the term "goods" shall include immovable property.

Meaning of an unfair term.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.23.

45. (1) An unfair term means any term in a consumer contract, which on its own or in conjunction with one or more other terms -

(a) creates a significant imbalance between the rights and obligations of the contracting parties to the detriment of the consumer; or



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(b) causes the performance of the contract to be unduly detrimental to the consumer; or

(c) causes the performance of the contract to be significantly different from what the consumer could reasonably expect; or

(d) is incompatible with the requirements of good faith.

(2) The unfairness of a term shall be assessed, taking into account the following:

(a) the nature of the goods or services for which the contract was concluded;

(b) the time of conclusion of the contract; and

(c) all the circumstances attending the conclusion of the contract and all the other terms of the contract or of another contract on which it is dependent. Such circumstances may also include:

(i) the bargaining power of the parties;

(ii) whether a consumer was subjected to undue pressure; and

(iii) whether the lack of knowledge or skill of a consumer was improperly taken advantage of.

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Provided that, in so far as it is in plain intelligible language,

the assessment of fairness of a term shall not relate -

(a) to the definition of the main subject matter of the contract, or

(b) to the adequacy of the price or remuneration, as against the goods or services supplied in exchange.

(3) The provisions of articles 44 to 47 shall be applicable to contracts concluded or executed after the coming into force of these articles.

Consequence of inclusion of unfair or prohibited term.

Added by:

XXVI. 2000.15.

46. A consumer contract that includes a prohibited or unfair term shall not be binding on the consumer unless the contract is capable of continuing in existence without the unfair term.

Use of plain language in consumer contract.

Added by:

XXVI. 2000.15.

Amended by:

XIII. 2009.4.

47. (1) In any consumer contract, where all or some terms

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offered by a trader to a consumer are in writing, these terms shall be written in plain and intelligible language which can be understood by the consumers to whom the contract is directed.

(2) Where any term is ambivalent or any doubt arises about the meaning of a term, the interpretation most favourable to the consumer shall prevail:

Provided that this subarticle shall not apply to proceedings brought under article 94.

Protection in case of a term applying the law of a non- Member State.

Added by:

II. 2008.24.

47A. The provisions of this Part shall apply notwithstanding any term in a consumer contract which applies or purports to apply the law of a non-Member State, if the contract has a close connection with the territory of any Member State.

Applicability over other laws.

Added by:

II. 2008.24.

Cap. 16.

Cap. 13.

47B. The provisions of this Part shall prevail over anything to the contrary contained in the Civil Code and the Commercial Code.



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Purpose of this Part.

Added by:

II. 2008.24.

47C. The purpose of this Part is to implement the provisions of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and the provisions of this Part shall be applied and interpreted accordingly.

PART VII

Unfair commercial practices and illicit schemes

Title I

Unfair commercial practices Misleading advertisements.

Added by:

XXVI. 2000.15.

48. (Deleted by II. 2008.27).

Meaning of comparative advertising.

Added by:

XXVI. 2000.15.

49. (Deleted by II. 2008.27).

Permitted comparative advertising.

Added by:

XXVI. 2000.15.

50. (Deleted by II. 2008.27).

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Offering gifts and prizes.

Added by:

XXVI. 2000.15.

51. (Deleted by II. 2008.27).

Interpretation.

Added by:

II. 2008.28.

51A. In this Title, unless the context otherwise requires:

"administrative provision" means any provision in a measure issued by any government Ministry or department, local authority or any other public body which is binding on the person to whom it is addressed, including any order, licence, permit, warrant or decision;

"code of conduct" means an agreement or set of rules not imposed by law or administrative provision which defines the behaviour of traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;

"code owner" means any entity, including a trader or group of traders, which is responsible for the formulation and revision of a code of conduct and, or for monitoring compliance with the code by those who have undertaken to be bound by it;

"commercial practice" means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers; whether it takes place before, during or after a commercial transaction in relation to the product;

"invitation to purchase" means a commercial communication which indicates characteristics of the product and the price in a way

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appropriate to the means of commercial communication used,
which is such as to induce a consumer to make a purchase;
"product" means any good or service including immovable
property, rights and obligations;
"professional diligence" means the standard of skill and care
which a trader may reasonably be expected to exercise towards
consumers, commensurate with honest market practice and, or the
general principle of good faith, in the trader's field of activity;
Cap. 451.

"regulated profession and regulated professional activity" has the
same meaning assigned to it in the Mutual Recognition of
Qualifications Act;

"to materially distort the economic behaviour of a consumer"
means using a commercial practice to appreciably impair the
consumer's ability to make an informed decision, thereby causing
the consumer to take a transactional decision that he would not
have taken otherwise;

"transactional decision" means any decision taken by a consumer
concerning whether, how and on what terms -

- (i) to purchase a product, or
- (ii) to make payment in whole or in part for a
product, or
- (iii) to retain or dispose of a product, or
- (iv) to exercise a contractual right in relation to the
product, whether the consumer decides to act or
to refrain from acting;

"undue influence" means exploiting a position of power in
relation to the consumer so as to apply pressure even without using
or threatening to use physical force, in a way which significantly
limits the consumer's ability to make an informed decision.

Unfair commercial practices.

Added by:

II. 2008.28.

51B. (1) Unfair commercial practices shall be prohibited.

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(2) A commercial practice shall be unfair if:

- (a) it is contrary to the requirements of professional diligence, and
- (b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product, of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers:

Provided that, other than the advertising practice of making exaggerated statements or statements which are not meant to be taken literally, commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group.

(3) In particular, a commercial practice shall be unfair if it is misleading in terms of articles 51C and 51D, or aggressive in terms of article 51E.

(4) Those commercial practices listed in the First Schedule shall in all circumstances be regarded as unfair.

Misleading actions.

Added by:

II. 2008.28.

51C. A commercial practice shall be regarded as misleading if:

- (a) it contains false information; or
- (b) in any way, including its overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case

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causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

- (i) the existence or nature of the product;
- (ii) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;
- (iii) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product;
- (iv) the price or the manner in which the price is calculated, or the existence of a specific price advantage;
- (v) the need for a service, part, replacement or repair;
- (vi) the nature, attributes and rights of the trader or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;
- (vii) the consumer's rights, including the right to repair, replacement or reimbursement as provided in Part IX of the Act, or the risks he may face; or

(c) in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the

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average consumer to take a transactional decision that he would not have taken otherwise, and it involves:

- (i) any marketing of a product, including comparative advertising, which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor; or
- (ii) non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where -
 - (a) the commitment is not aspirational but is firm and is capable of being verified, and
 - (b) the trader indicates in a commercial practice that he is bound by the code.

Misleading omissions.

Added by:

II. 2008.28.

51D. (1) A commercial practice shall be regarded as misleading if:

- (a) in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise; or
- (b) taking account of the matters described in paragraph (a), the trader hides, or provides in an unclear, unintelligible, ambiguous or untimely manner, such material information as referred to in that paragraph, or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is

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likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

(2) Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted.

(3) In the case of an invitation to purchase, the following information shall be regarded as material, if not apparent from the context:

(a) the main characteristics of the product, to an extent appropriate to the medium and the product;

(b) the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;

(c) the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;

(d) the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;

(e) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

(4) Information requirements established by law in relation to commercial communications including advertising or marketing shall be regarded as material.

Aggressive commercial practices.

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Added by:

II. 2008.28.

51E. (1) A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.

(2) In determining whether a commercial practice uses harassment, coercion, including the use of physical force, or undue influence, account shall be taken of:

(a) its timing, location, nature or persistence;

(b) the use of threatening or abusive language or behaviour;

(c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;

(d) any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader;

(e) any threat to take any action that cannot legally be taken.

Infringements.

Added by:

II. 2008.28.

51F. A person who engages in an unfair commercial practice in terms of articles 51B, 51C, 51D and 51E, shall be guilty of an infringement against this Act.

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Control by code owners.

Added by:

II. 2008.28.

51G. (1) The provisions of this Title shall not preclude the control by code owners of unfair commercial practices through codes of conduct.

(2) Recourse to code owners for the purpose of ensuring compliance with such codes of conduct shall not prejudice any other form of redress available under this Act or any other law.

Exclusion.

Added by:

II. 2008.28.

51H. The provisions of this Title shall not apply to any other law relating to the certification and indication of the standard of fineness of articles of precious metal.

Scope.

Added by:

II. 2008.28.

51I. The provisions of this Title shall be without prejudice to:

- (a) any provision under the laws of Malta regulating contract in particular those governing the validity, formation or effect thereof;
- (b) any rule relating to the health and safety aspects of products;
- (c) any provision under the laws of Malta implementing a Community Directive or any provision under Community law regulating specific aspects of unfair commercial practices, in so far as those specific aspects are concerned;

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(d) any condition of establishment or of an authorization regime or any deontological code of conduct or other specific rules governing regulated professions in order to uphold high standards of integrity on the part of the professional;

(e) any requirement imposed by any other law, in the field of financial services and immovable property, which is more restrictive or prescriptive than the requirements imposed by the provisions of this Title.

Purpose of this Title.

Added by:

II. 2008.28.

51J. The purpose of this Title is to implement Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, and the provisions of this Title shall be applied and interpreted accordingly.

Added by:

II. 2008.29.

Title II

Illicit schemes

Pyramid selling schemes.

Added by:

XXVI. 2000.15.

52. (Deleted by II. 2008.30).

Chain letter schemes.

Added by:

II. 2008.31.

52A. (1) Any scheme of the type similar to a chain letter scheme, which is unconnected with the supply of goods or services,



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that is unfair to the majority of participants in the scheme, shall be prohibited.

(2) A scheme shall be unfair if:

(i) the financial rewards of the majority of the participants are dependant on the recruitment of additional participants; and

(ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by a majority of the participants in the scheme.

(3) A person who establishes, operates or promotes a scheme in terms of this article shall be guilty of an infringement against this article.

Misleading representations about certain schemes or activities.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.32.

53. (1) Without prejudice to the provisions of Title I of this Part, a person who makes a representation that is false or misleading to a material degree concerning the profitability or risk or any other material aspect of any work from home scheme or any other similar scheme or activity however described and which that person represents as one that can be, or can be to a substantial extent, carried from a person's place of residence, shall be guilty of an infringement against this Part of this Act.

(2) A person who invites, whether by advertisement or otherwise, persons to engage or participate, or to offer or apply to engage or participate, in schemes or activities referred in subarticle

(1) requiring -

(a) the performance by the persons concerned of works; or

(b) the investment of money by the persons concerned and the performance by them of work associated with the

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investment

and makes, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading to a material degree, shall be guilty of an infringement against this Part of this Act.

Offences.

Added by:

XXVI. 2000.15.

Amended by:

L.N. 425 of 2007.

54. (Deleted by II. 2008.33).

Applicability over other laws.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.34.

Cap. 13.

Cap. 313.

55. The provisions in this Part shall prevail over anything to the contrary contained in the Commercial Code and the Trade Descriptions Act.

Transitory provision.

Added by:

II. 2008.35.

55A. (1) The provisions of articles 48 to 53, as they were prior to the 12th December, 2007 shall be deemed to have remained in force for the purpose of any prosecution commenced in terms thereof prior to the said date.

(2) Where an act in breach of articles 48 to 53 as they were prior to 12th December, 2007 happened before the said date, but no

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prosecution was commenced by the said date, the provisions of this Part as in force from the 12th December, 2007 shall apply, as if such act happened after the said date.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.25.

PART VIII

Liability for defective products

Interpretation.

Added by:

XXVI. 2000.15.

Amended by:

XV. 2006.6;

II. 2008.36.

56. In this Part, unless the context otherwise requires:

"personal injury" includes any disease and any impairment of the physical or mental condition of a person;

"primary agricultural products" means any product of the soil, of stock-farming and of fisheries and game;

"product" means any movable and includes:

(a) any movable incorporated into another product or into an immovable,

(b) electricity,

(c) gas, and

(d) primary agricultural products;

"producer" means:

(a) the manufacturer of a finished or processed product, or

(b) the manufacturer of a component part, or

(c) the producer of any raw material, or

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(d) the producer of any products of the soil, of stockfarming and of fisheries and game, or

(e) any person who, by putting his name, trade mark or other distinguishing feature on the product, presents himself as its producer, or

(f) where the product is manufactured or produced outside a Member State, any person who imports into an EEA State a product for sale, hire, leasing or any other form of distribution.

Liability of the producer.

Added by:

XXVI. 2000.15.

57. The producer shall be liable for the damage caused wholly or partly by a defect in his product.

Proof of damage and defect.

Added by:

XXVI. 2000.15.

58. The injured party shall only have the onus of proving the damage, the defect and the causal relationship between the defect and the damage and shall not have the onus of proving the fault of the producer.

Liability of the supplier of the product.

Added by:

XXVI. 2000.15.

59. (1) The supplier of the product shall be treated as the producer if -

(a) the producer cannot be identified and the injured party has asked the supplier to provide the identity and full address of the producer or of the person who supplied the supplier with the product, or

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(b) in the case of an imported product where the importer cannot be identified even if the name of the producer is indicated and the injured party has asked the supplier to provide the identity and full address of the importer or of the person who supplied the supplier with the product, and the supplier fails to do so within thirty days from when the request was made to him.

(2) A request under subarticle (1) shall -

(a) be in writing and sent by registered mail or official letter to the place of trade or business of the supplier; and

(b) indicate the product that caused the damage, the place from where and, if possible the approximate date, when it was acquired.

(3) The supplier has the burden of proving that he provided the injured party with the information required under subarticle (1) within the period therein indicated.

Defective product.

Added by:

XXVI. 2000.15.

60. (1) A product is defective if it fails to provide the safety which a person is entitled to expect, taking all circumstances into account including:

(a) the presentation of the product, how it was marketed, and any directions and warnings provided,

(b) the use to which it could reasonably be expected that the product would be put, and

(c) the time when the product was put into circulation.

(2) A product shall not be considered defective only because a better product is subsequently put into circulation.

(3) A product shall be considered defective if it does not provide for the safety which is usually provided for by other models of the same type.



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Damages that are recoverable.

Added by:

XXVI. 2000.15.

Amended by:

L.N. 425 of 2007;

VI. 2011.97.

61. Damages that may be recovered under this Part are:

- (a) damages caused by death or by personal injury, or
- (b) loss of, damage to, or destruction of, any item of property other than the defective product itself, having a value of at least five hundred euro (€500), or such other value that the Minister may prescribe:

Provided that -

- (i) the item of property is of a type ordinarily intended for private use or consumption, and
- (ii) the item of property was used by the injured party mainly for his own private use or consumption.

Defences a producer may raise.

Added by:

XXVI. 2000.15.

62. The producer shall not be liable under this Part if he proves -

- (a) that he did not put the product into circulation, or
- (b) that, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards, or
- (c) that the product was neither manufactured by him for sale or for any form of distribution for an economic purpose nor manufactured or distributed by him in the

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course of his business or trade, or

(d) that the defect in question is due to compliance with a mandatory requirement imposed by law or by a public authority, or

(e) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered, or

(f) in the case of the manufacturer of a component or the producer of a raw material, that the defect is attributable to the design of the product in which the component has been fitted or the raw material has been incorporated or to the instruction given by the manufacturer of the product.

Provisional payment of referee.

Added by:

XXVI. 2000.15.

Cap. 12.

63. The court may, notwithstanding any provisions of the Code of Organization and Civil Procedure, order that the fees of a referee be provisionally paid or deposited by the producer if there is prima facie evidence that the damage was caused by a defect in the product.

Joint and several liability.

Added by:

XXVI. 2000.15.

64. Where under this Part, two or more persons are liable for the same damage, they shall be liable jointly and severally.

Contribution to damage by injured person.

Added by:



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XXVI. 2000.15.

Cap. 16.

65. Article 1051 of the Civil Code shall apply in determining the liability of the producer where the damage is caused by a defect in the product and by the fault of the injured person or by a person for whom the injured person is responsible.

Liability if there is an act or omission of a third party.

Added by:

XXVI. 2000.15.

66. The liability of the producer shall not be reduced when the damage is caused both by a defect in the product and by the act or omission of a third party.

Prescription.

Added by:

XXVI. 2000.15.

Amended by:

VI. 2011.98.

67. (1) The action for damages under this Part shall be barred by the lapse of three years commencing from the day when the injured party became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer.

(2) Notwithstanding subarticle (1), the action for damages under this Part shall in any case be extinguished upon the expiration of the period of ten years from the date on which the producer put into circulation the actual product which caused the damage unless the injured party has in the meantime instituted legal proceedings against the producer.

(3) Sub-titles I, II and III of Title XXV of the Civil Code Cap. 16. concerning the causes which prevent, suspend and interrupt prescription shall apply to actions made under this Part.

(4) The burden of proving when the actual product which caused the damage was put into circulation shall lie on the

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producer.

Prohibition of exclusion of liability.

Added by:

XXVI. 2000.15.

68. The liability of a producer under this Part may not be limited or excluded whether by any term of contract, by any notice or in any other manner whatsoever.

Other rights of action not precluded.

Added by:

XXVI. 2000.15.

Cap. 16.

69. The provisions under this Part shall not exclude or limit any rights or remedies available to the injured person under the Civil Code or any other law.

Damages arising from nuclear accidents.

Added by:

XXVI. 2000.15.

70. The provisions under this Part shall not apply to injury or damage arising from nuclear accidents which are governed by any international agreement to which Malta is a party.

Application of this Part.

Added by:

XXVI. 2000.15.

Substituted by:

XV. 2006.7.

Amended by:

II. 2008.37.

71. This part shall apply to products which are put into

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circulation in any Member State as from 1st May, 2004.

Purpose of this Part.

Added by:

XV. 2006.8.

71A. The purpose of this Part is to implement the provisions of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products as amended by Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 and this Part shall be applied and interpreted accordingly.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.25.

PART IX

Sale of goods to consumers

Interpretation.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.38.

72.

(1) In this Part unless the context otherwise requires:

"commercial guarantee" means any representation or undertaking

however described or given by a trader or a producer to a

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consumer, irrespective of whether given with or without an extra charge, to reimburse the price paid or to replace, repair or handle goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising;

"free of charge" refers to the exclusion of the costs incurred to bring the goods into conformity with the contract of sale, particularly of the cost of postage, labour and materials, which costs shall accordingly be borne by the trader;

"goods" means any tangible movable item of property;

"guarantor" means the person who is responsible to the consumer for the execution of a commercial guarantee and includes any other person acting for or on behalf of the guarantor;

"producer" means the manufacturer of consumer goods, the importer of consumer goods into a Member State or any other country or group of countries as may, from time to time, be designated for this purpose by the Minister by notice in the Gazette, or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the goods;

"repair" means in the event of lack of conformity, the process of bringing goods into conformity with the contract of sale.

(2) Contracts for the supply of consumer goods still to be manufactured or produced shall also be deemed contracts of sale

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for the purposes of this Part.

(3) The provisions of this Part shall be applicable to contracts of sale of goods to consumers concluded or executed after the coming into force of this Part.

Conformity with the contract.

Added by:

XXVI. 2000.15.

73.

(1) Traders are obliged to deliver to consumers, goods which are in conformity with the description and specifications in the contract of sale, and shall accordingly be obliged to ensure that the goods -

- (a) comply with the description given by the trader and possess the characteristics, features and qualities of the goods which the trader has promised or has shown or otherwise held out to the consumer as a sample or model;
- (b) are fit for the particular purpose for which the consumer requires them and which he made known to the trader at the time of conclusion of the contract;
- (c) are fit for the purpose for which goods of the same

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type are normally used; and

(d) show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the trader, the producer or his representative, particularly in advertising or on labelling.

(2) The obligations of the trader under subarticle (1) at the time when the contract was concluded, shall lapse and cease in the following circumstances:

- (a) where the consumer was aware, or could not reasonably be unaware, of the lack of conformity, or
- (b) where the lack of conformity has its origin in materials supplied by the consumer.

(3) The trader shall be bound by public statements referred to in subarticle (1)(d) unless he -

- (a) shows that he was not, and could not reasonably have been, aware of the statement in question, or

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(b) shows that by the time of conclusion of the contract the statement had been corrected, or
(c) shows that the decision to buy the goods could not have been influenced by the statement.

(4) Any lack of conformity resulting from incorrect installation of the goods shall be deemed to be equivalent to lack of conformity of the goods if the installation is part of the contract of sale of the goods and the goods were installed by the trader or under his responsibility. This shall also apply if the product, intended to be installed by the consumer, is installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

Remedies available to consumer.

Added by:

XXVI. 2000.15.

74.

(1) The trader shall be liable to provide a remedy pursuant to this article to the consumer for any lack of conformity in the goods which existed at the time the goods were delivered by the

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trader to the consumer. Subject to the other provisions of this Part,
it shall be for the consumer to decide which remedy to request.

(2) In the case of such a lack of conformity, the consumer shall
be entitled either -
(a) to have the goods brought into conformity free of
charge by repair or replacement, in terms of article
75(1), or
(b) to a refund of an appropriate reduction in the price or
by having the contract rescinded with regard to those
goods, in terms of article 76(1) or (2).

Repair or replacement of goods.

Added by:

XXVI. 2000.15.

75.

(1) Unless it is impossible or disproportionate, the
consumer may, in the first instance, require the trader to repair the
goods or else to replace them, in either case free of charge.



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(2) A remedy shall be deemed to be disproportionate if it imposes costs on the trader which, in comparison with the alternative remedies available under this Part, are unreasonable, taking into account -

- (a) the value of the goods had there not been lack of conformity,
- (b) the significance of the lack of conformity, and
- (c) whether the alternative remedy could be completed without significant inconvenience to the consumer.

(3) Any repair or replacement shall be completed, as soon as practicable, within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.

Reduction of price or rescission of contract.

Added by:

XXVI. 2000.15.

76. (1) The consumer may require an appropriate reduction of the price or have the contract rescinded -

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- (a) where the consumer cannot obtain either the remedy of repair or of replacement, or
 - (b) if the trader has not completed the remedy of repair or replacement within a reasonable time, or
 - (c) if the trader can only provide or complete the remedy of repair or replacement with significant inconvenience to the consumer.
- (2) The consumer is not entitled to have the contract rescinded if the lack of conformity is minor or insignificant.

Right of redress of final seller.

Added by:

XXVI. 2000.15.

77. Where the trader as the final seller of goods is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the final seller shall be entitled to pursue remedies against the person or persons liable in the contractual chain.

Limitation of action.

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Added by:

XXVI. 2000.15.

Amended by:

VI. 2011.99.

78. The trader shall be liable under the provisions of articles 73 and 74 where the lack of conformity becomes apparent to the consumer within two years from the delivery of the goods. This period shall be suspended for the duration of negotiations carried on between the trader and the consumer with a view to an amicable settlement.

Notification of trader.

Added by:

XXVI. 2000.15.

79. (1) In order to benefit from the remedies available under this Part, a consumer must notify the trader of any lack of conformity in writing within two months from the date on which the consumer detected such lack of conformity.

(2) For the purposes of this article, it shall be considered sufficient proof of notification if the notification is made by a judicial act within the prescribed period, or if the consumer shows that the letter was sent by registered mail within the prescribed period.



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Presumption of existence of lack of conformity.

Added by:

XXVI. 2000.15.

80. Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery, where this presumption is broadly compatible with the nature of the goods or the nature of the lack of conformity.

Contractual clauses not binding if they waive or restrict rights.

Added by:

XXVI. 2000.15.

81. Any contractual clauses or agreement concluded by the consumer with the trader before the lack of conformity is brought to the attention of the trader, are not binding on the consumer if such clauses or agreement directly or indirectly waive or restrict the rights available under this Part.

Commercial guarantee to be more advantageous.

Added by:

XXVI. 2000.15.



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82. A commercial guarantee is an additional guarantee which places the beneficiary of such a guarantee in a more advantageous position than that established at law. A commercial guarantee shall not adversely affect other available remedies under any other law governing contractual or delictual liability.

Requirements for commercial guarantees.

Added by:

XXVI. 2000.15.

83. (1) A commercial guarantee shall be drawn up in written form in a clear and legible manner, in plain language and it shall comply with the following:

(a) be formulated in at least one of the official languages of Malta;

(b) set out the name and address of the guarantor, and clearly state the permanent address of the place of trade or business and the name of the person who is supplying the consumer with the commercial guarantee;

(c) clearly state the contents of the guarantee including its territorial scope if this is limited as well as the duration of the guarantee from the date of purchase and different periods may be stipulated for different components of any goods;



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(d) clearly specify the manner how a consumer is to proceed to make a claim and to obtain execution of the commercial guarantee, the person authorised to execute the commercial guarantee and an address in Malta where claims may be sent. If a person who in supplying a commercial guarantee, fails to provide the consumer with the information required under this paragraph he shall then be responsible for the execution of the commercial guarantee at his expense;

(e) clearly state whether the commercial guarantee may be transferred to others. Unless otherwise stipulated the commercial guarantee may also be availed of by any subsequent owners of the goods to which the commercial guarantee refers:

Provided that unless the commercial guarantee specifically states otherwise, it shall be assumed that in the case of goods, the commercial guarantee covers any defects that may result during the period of guarantee;

(f) provide a clear description of the goods or services covered under the commercial guarantee;

(g) clearly stipulate what the guarantor undertakes to do if there is a defect in the goods covered by the commercial guarantee or if the services covered by the



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guarantee are not properly carried out; and

(h) state clearly that the consumer enjoys certain rights at law in relation to the sale of goods to consumers and that those rights are not adversely affected by the guarantee.

(2) At the request of the consumer, the trader shall make available to the consumer the commercial guarantee in writing or in another durable medium accessible and available to the consumer.

(3) Where a commercial guarantee does not comply with the requirements set out in this article, the validity of the guarantee shall not be affected and the consumer shall remain entitled to claim under it and require that it be honoured.

Liability under a commercial guarantee.

Added by:

XXVI. 2000.15.

84. Where a trader or any other person gives a commercial guarantee to a consumer, irrespective of when or how it is given, then that trader or other person shall be liable to the consumer for the observance of the terms and execution of the commercial guarantee as if he were the guarantor, unless that trader or other person, as the case may be, proves that he had expressly and clearly

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informed the consumer to the contrary at the time of the delivery of the goods or performance of the service.

Commercial guarantee shall not exclude rights under other laws.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.39.

85. A commercial guarantee and any rights granted to a consumer under the guarantee shall not in any way, whether directly or indirectly, exclude or limit the rights of a consumer under this Act or under any other law. Any such exclusion or limitation stipulated in violation of this prohibition shall be null and ineffective.

Guarantor may ask only for charges as stipulated.

Added by:

XXVI. 2000.15.

86. A guarantor may not, when performing or executing a commercial guarantee, request a consumer to pay any fee or any charge however designated, unless this had been expressly and clearly stipulated in the commercial guarantee.

Cost of carriage.

Added by:

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XXVI. 2000.15.

87. The guarantor shall assume the cost of any carriage incurred in respect of the performance of a commercial guarantee unless otherwise stipulated in the commercial guarantee.

Extension of commercial guarantee.

Added by:

XXVI. 2000.15.

88. The duration of a commercial guarantee shall be automatically extended for a period equal to the time during which the guarantor had the goods or part of the goods in his possession in order to perform or execute the commercial guarantee or as a result of the recall of the goods or part thereof by the manufacturer.

Guarantee by a third person.

Added by:

XXVI. 2000.15.

89. The designation by the guarantor of a third person to execute a commercial guarantee does not free the guarantor from the obligation towards the consumer pursuant to the commercial guarantee given to the consumer.

Commercial guarantee stated in advertisement.

Added by:

XXVI. 2000.15.

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90. A commercial guarantee whether about goods or services that is mentioned in a statement or advertisement by any person shall be binding on that person even if such a commercial guarantee is not specifically mentioned in the contract of sale.

Rights of action under commercial guarantee.

Added by:

XXVI. 2000.15.

Amended by:

L.N. 425 of 2007;

VI. 2011.100.

91. (1) Without prejudice to any other remedies at law, a consumer may institute civil proceedings against a guarantor who fails to observe any of the terms or undertakings stipulated in a commercial guarantee.

(2) The court may in any civil proceedings instituted under this Part -

(a) order the guarantor to take such remedial action as may be necessary to observe the terms of the guarantee, or

(b) order the guarantor to perform his obligations under the commercial guarantee to its satisfaction within such period as the court may establish. In doing so the court may order the guarantor to pay to the consumer a sum not exceeding one hundred and twenty euro (€120) for each day of default in case of noncompliance after the lapse of the period established by the court.

Provisions to prevail over other laws.

Added by:

XXVI. 2000.15.

92. The provisions of this Part where they are more favourable

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to the consumer, shall prevail over the provisions of any other law.

Replacement parts, repair service where goods require maintenance.

Added by:

XXVI. 2000.15.

93. (1) If the goods being the object of a contract of sale to a consumer, are of a nature that may require maintenance, or possible replacement of parts, then replacement parts and appropriate repair service must be made available for a reasonable time from the date of the delivery of the goods by the trader to the consumer.

(2) The trader or the producer may release himself from this obligation by specifically and expressly warning the consumer in writing, before the contract is entered into, that he does not supply replacement parts or repair service.

Protection in case of a contract applying the law of a non-Member State.

Added by:

II. 2008.40.

93A. The provisions of this Part shall apply notwithstanding any clause in a contract for the sale of goods to a consumer which applies or purports to apply the law of a non-Member State, if the contract is concluded in or has a close connection with the territory of any Member State or such other country or group of countries as the Minister may from time to time designate for the purpose of this provision by notice published in the Gazette.

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Purpose of this Part.

Added by:

II. 2008.40.

93B. The purpose of this Part is to implement the provisions of Directive 1999/44/EC of the European Parliament and of the Council of the 25th May 1999 on certain aspects of the sale of consumer goods and associated guarantees and the provisions of this Part shall be applied and interpreted accordingly.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.25.

PART X

Compliance orders

Issue of compliance orders.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.41;

VI. 2011.75;



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VI. 2011.101.

94. (1) Where he feels it reasonably appropriate or necessary in the public interest, the Director General may, whether or not in conjunction with a decision finding an infringement under article 14A, of his own initiative or on a written application to him by a qualified entity, issue a compliance order -

(a) on any person requiring -

(i) the deletion or alteration of terms in a consumer contract which the Director General considers to be unfair to consumers in accordance with the provisions of Part VI of this Act; and

(ii) the incorporation of terms in a consumer contract which the Director General considers to be necessary for the better information of consumers, or for preventing a significant imbalance between the rights and obligations of the parties, and this to the benefit of consumers;

(b) requiring any person engaging or proposing to engage in any unfair commercial practice, to discontinue or refrain from such practice and, or to take any measures specified in the compliance order, including the making of a corrective statement, within the time specified therein to ensure that the provisions of Part VII of this Act are complied with;

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(c) requiring any person to take any measures specified in the compliance order, including the making of a corrective statement, within the time specified in the compliance order to ensure that this Act or any regulations made thereunder or any other law dealing with consumer rights and protection as may be designated by Order in the Gazette by the Minister acting after consulting the Council, are complied with; and

(d) requiring any person to cease or desist from committing an offence or an infringement against this Act or any regulations made thereunder or of any other law dealing with consumer rights and protection as may be designated by Order in the Gazette by the Minister after consulting the Council.

(2) The qualified entity requesting a compliance order in terms of subarticle (1) must satisfy the Director General that it has tried to achieve the cessation of the infringement in consultation with either the defendant or both the defendant and another qualified entity and that the cessation was not achieved within two weeks from the request for cessation.

(3) Where the qualified entity is from another Member State, the Director General shall treat the list of qualified entities published by the European Commission as conclusive proof of the



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legal capacity of the legal entity to present such written application in Malta.

(4) Where the qualified entity is from Malta, and such entity is not included in the list of qualified entities published by the European Commission, the Director General shall, at the request of the qualified entity concerned, communicate to the European Commission the name and objects of such entity and that such qualified entity should be added to the list of qualified entities so as to facilitate the redress of intra-Community infringements.

(5) The Director General shall, when issuing a compliance order under this article -

(a) serve a copy of the compliance order on each person against whom the order is made;

(b) include with the compliance order, information about the right to file an application before the Appeals Tribunal in accordance with article 97; and

(c) briefly state his reasons for issuing the compliance order, which reasons shall be notified to each person against whom the compliance order is issued and, if any, to the qualified entity on whose application the compliance order is issued;

(d) notify the person against whom the order is made that non-compliance with the order may lead to the imposition of an administrative fine.

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(6) No precautionary warrant or other order under any other law shall be issued by any court or tribunal restraining or restricting the Director General from issuing a compliance order under this Act.

(7) A qualified entity, when making an application under this Part, is not required to have or to prove an interest in, or be affected by, the matter or act in issue.

(8) Any person who fails to comply with a compliance order issued by the Director General, shall be guilty of an infringement against this article.

Discretion of Director General to issue a compliance order.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.42;

VI. 2011.75, 102.

95. (1) It shall be at the discretion of the Director General whether or not to issue a compliance order after a written request by qualified entity has been made to him in terms of article 94.

(2) If the Director General decides not to issue a compliance order after an application has been made to him by a qualified

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entity, he shall, within seven days from the date of his decision, notify in writing the qualified entity and the persons against whom the compliance order is requested with his decision stating his reasons therefor.

(3) A qualified entity may within fifteen days from the date of notification upon it of the decision of the Director General not to issue a compliance order, file an application before the Appeals Tribunal for the issue of an order requiring the Director General to issue a compliance order under article 94. The persons against whom the compliance order is requested to be made shall be parties to the suit, and it shall be the duty of the qualified entity to notify such persons accordingly.

(4) In exercising his functions and powers under this Part the Director General shall in all cases act as expeditiously as possible. In the case of an application by a qualified entity, the Director General shall give his decision within fifteen days from receipt of the application.

Compliance order to take immediate effect.

Added by:

XXVI. 2000.15.

96. A compliance order shall come into force with immediate effect.



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Application for revocation of a compliance order.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.43;

VI. 2011.75, 103.

97. (1) A person against whom a compliance order has been made may, within fifteen days from notification of the compliance order, appeal from the said order by application before the Appeals Tribunal for the revocation or amendment of the compliance order.

Such action may be made only on the following grounds:

(a) on a material point of law; or

(b) if the making of a compliance order is grossly unreasonable or unjustified.

(2) The Appeals Tribunal may confirm or revoke the compliance order or change it on any terms or conditions the Appeals Tribunal may consider appropriate.

(3) A person against whom a compliance order has been made may not appeal before the Appeals Tribunal in terms of this article if he has already been made a party to the suit in terms of article 95.

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Cases to be heard and determined with urgency.

Added by:

XXVI. 2000.15.

Substituted by:

II. 2008.44.

Amended by:

VI. 2011.104.

98. Appeals filed under articles 95 and 97 shall be heard and determined by the Appeals Tribunal with urgency and as expeditiously as possible.

No need to prove actual loss, etc.

Added by:

XXVI. 2000.15.

Amended by:

VI. 2011.75.

99. The Director General, when issuing a compliance order under article 94, shall not be required to prove -

- (a) actual loss or damage, or
- (b) actual recklessness, negligence or fault on the part of the person against whom the order is made.

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Director General to seek voluntary compliance.

Added by:

XXVI. 2000.15.

Amended by:

VI. 2011.75.

100. The Director General shall, whenever he considers it to be possible and reasonable to do so, seek first to achieve voluntary compliance by the person or persons involved, with this Act or regulations made thereunder or with any other law dealing with consumer rights and protection as may be designated by the Minister after consulting the Council by Order in the Gazette, before proceeding for the issue of a compliance order under article 94.

Director General may require publication.

Added by:

XXVI. 2000.15.

Substituted by:

II. 2008.45.

Amended by:

VI. 2011.75.

101. (1) The Director General may, in order to eliminate or



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reduce the continuing effects of any non-observance of any provisions of this Act or of regulations made thereunder or of any other law dealing with consumer rights and protection as may be designated by the Minister after consulting the Council by order in the Gazette, require by notice in writing any person -

(a) to publish a copy of the compliance order made under article 94 against any such person, in full or in part and in such form as he considers to be appropriate and adequate; and, or

(b) to publish a corrective statement as required by the compliance order in relation to any infringement of this Act, against any regulations made thereunder, or against any other law dealing with consumer rights and protection as may be designated by the Minister after consulting the Council by order in the Gazette.

(2) Publication shall be made in at least two daily newspapers and if appropriate, in any other medium of communication within seven days from receipt of the notice and it shall be at the expense of the person served with such notice. Where such publication is not effected as aforesaid, the Director General may proceed to effect publication himself, in which case he shall have the right to recover from the person on whom the notice is served any expenses incurred as a civil debt.

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Added by:

XXVI. 2000.15.

Amended by:

II. 2008.25.

PART XI

Enforcement

Production of written authorisation.

Added by:

XXVI. 2000.15.

Amended by:

XV. 2006.9;

II. 2008.5, 46;

VI. 2011.75.

102. (1) The Director General may in writing authorise a public officer, or with the consent of the Minister, any other person employed by a body corporate established by law, to perform any of his functions or exercise any power granted to him under this Act. Any such officer or person shall, when required, produce the written authorisation signed by the Director General.

(2) Where there is an exchange of officials from competent authorities in terms of the Consumer Protection Co-operation Regulation, the Director General may in writing authorise such officials to perform, in full or in part, any of the functions or exercise any of the powers granted to him under this Part.

Entry of inspection.

Added by:

XXVI. 2000.15.

Amended by:

VI. 2011.75.

103. (1) For the purpose of discharging his functions under this Act, the Director General may -

(a) enter and search any premises other than premises

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used exclusively as a place of residence;

(b) make any inspection, conduct any test and on paying or making tender therefor, take any goods; and

(c) take any books, documents or records however kept or stored.

No entry and search shall be effected between seven in the evening and seven in the morning, unless the Director General has reason to believe that delay could cause the loss of necessary information.

(2) Where the Director General takes any book, document or record under this article, he may retain that book, document or record -

(a) for as long as it is necessary to enable it to be inspected and copies of extracts from it to be made or taken, or

(b) if it is required as evidence in proceedings for an offence under this Act or any regulations made thereunder.

(3) The Director General shall give to the person from whom anything has been taken, a receipt for what has been taken.

(4) If the Director General keeps the original of any book, document or record, he shall allow the owner thereof to have reasonable access thereto or to a copy thereof as soon as practicable.

Cap. 9.

(5) Nothing in this Part shall be deemed to detract from the powers of the Police under the Criminal Code or any other law.

(6) In the course of any entry and search under this Part, the Director General may request the assistance of the Police.

Obtaining information.

Added by:

XXVI. 2000.15.

Amended by:

VI. 2011.75.

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104. (1) The Director General may, for the purpose of discharging his functions under this Act, require any person to provide any information in any manner, including:

- (a) by answering any questions, orally or in writing; or
- (b) by producing any books, documents or other records as the Director General may consider to be necessary.

(2) A person shall not be required to answer any question if the answer may subject him to criminal proceedings.

Mutual assistance with other authorities.

Added by:

XV. 2006.10.

Amended by:

II. 2008.5;

VI. 2011.75.

Cap. 440.

104A. (1) Notwithstanding anything contained in this Act, the Director General may, in order to carry out his function as competent authority under the Consumer Protection Co-operation Regulation, request, receive, disclose and exchange information in matters of mutual assistance with other competent authorities in terms of the Consumer Protection Co-operation Regulation and the Data Protection Act.

(2) Notwithstanding the provisions of any other law, the Director General may produce as evidence before any court or tribunal any such information, including documents, findings, statements, certified true copies or intelligence received from competent authorities in terms of subarticle (1).

Obstruction of

Director General.

Added by:

XXVI. 2000.15.

Amended by:



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II. 2008.47;

VI. 2011.75.

105. Any person who -

(a) wilfully obstructs, assaults, threatens, resists or interferes with the Director General or a public officer or an authorised person in the exercise of his duties under this Part, or attempts so to do; or

(b) uses threatening, abusive or insulting language to the Director General or a public officer or an authorised person in the course of his duties under this Part; or

(c) refuses or fails to furnish information as required under this Part or else provides false or misleading information,

shall on conviction be guilty of an offence against this Act.

Offences.

Added by:

XXVI. 2000.15.

Amended by:

L.N. 425 of 2007;

II. 2008.48;

VI. 2011.105.

106. A person guilty of an offence against this Act or of any regulation made thereunder shall, unless a different punishment is prescribed therefor, on conviction be liable to a fine (multa) or not less than four hundred and seventy euro (€470) and not more than forty-seven thousand euro (€47,000).



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Administrative fines.

Added by:

II. 2008.49.

Amended by:

VI. 2011.75, 106.

106A. (1) The Director General may impose an administrative fine upon any person who is found by the Director General following an investigation under article 14A to have committed an infringement of a provision of this Act or of any regulation made thereunder.

(2) An administrative fine imposed for an infringement under subarticle (1) shall not be less than four hundred and seventy euro (€470) and not more than forty-seven thousand euro (€47,000):

Provided that in the case of non-compliance with a compliance order the Director General may also impose a daily fine of not more than two hundred and thirty euro (€230) for each day of non-compliance.

(3) In determining the amount of an administrative fine in respect of infringements of provisions of this Act, the Director General shall follow the rules of the Second Schedule; and in respect of infringements of regulations made under this Act and infringements of provisions of other laws administered by the



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Director General, the Director General shall follow the respective rules determining the amount of the administrative fine prescribed therein.

(4) The Director General may, in conjunction with the Minister, from time to time amend, or substitute the Second Schedule.

(5) Before imposing an administrative fine under this article, the Director General shall write to the person concerned warning him that an administrative fine may be imposed and informing him of the amount of the fine that may be imposed and the specific reasons for which it may be imposed and granting the person concerned a period of not less than fifteen days as the Director General may determine to be appropriate in the circumstances during which period the person concerned may make his submissions to the Director General:

Provided that where the Director General has used the procedure provided for in article 14A, the period granted for submissions in the said article and in this subarticle may be given concurrently.

(6) Before deciding whether to impose an administrative fine the Director General shall consider the submissions, if any, made to him under subarticle (5).

(7) If after the lapse of the period during which submissions may be made in accordance with subarticle (5) the Director General considers that the person concerned has not given any valid proof



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or reasons to demonstrate that the administrative fine referred to in subarticle (5) should not be imposed, the Director General shall impose an administrative fine in accordance with this Act and shall give notice in writing to the person concerned specifying the nature of the infringement and the amount of the administrative fine due:

Provided that where the Director General has used the procedure provided for in article 14A, the said notice may be given in the decision finding an infringement issued under article 14A.

Cap.12.

(8) The notice as referred to in subarticle (7) shall, without prejudice to the right of appeal under article 110C, upon the service of a copy thereof by means of a judicial act on the person indicated in the notice, constitute an executive title for all effects and the purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

Cap.12.

(9) Notwithstanding the provisions of article 256(2) of the Code of Organization and Civil Procedure, the executive title referred to in subarticle (8) shall not be enforceable before the lapse of fifteen days from the service of the judicial act therein referred to:

Provided that where an appeal against an administrative fine in accordance with article 110C has been filed, the provisions of the same article shall apply.

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Court order.

Added by:

XXVI. 2000.15.

107. Where the court finds that a person has committed an offence under this Act or regulations made thereunder, the court may, without prejudice to any other order it may make under any other law -

(a) order the restitution of any money, property or other consideration given by the consumer;

(b) make an order of specific performance against that person; and

(c) make any other order the court considers appropriate.

Order by the

Director General.

Added by:

II. 2008.50.

Amended by:

VI. 2011.75.

107A. Where the Director General issues a decision finding an infringement under article 14A, he may, without prejudice to any other remedy provided for under this Act, order the restitution of any money or property given by the consumer.

Refund of monies paid.

Added by:

II. 2008.50.

107B. Participants, other than those who establish, operate or promote a chain letter scheme in terms of article 52A and a pyramid promotional scheme in terms of rule 14 of the First Schedule shall be entitled not later than two years from the date on which they have made the last payment to institute an action before

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the ordinary courts to demand a full refund of any monies paid by them into the scheme.

Prescription for offences and administrative infringements.

Added by:

XXVI. 2000.15.

Substituted by:

II. 2008.51.

108. The prosecution of an offence or the initiation of administrative proceedings under this Act or regulations made thereunder, unless a different term is prescribed therefor, shall be prescribed by the lapse of three years from the date on which the offence or infringement is alleged to have been committed.

Exemption from liability.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.52.

Substituted by:

VI. 2011.107.

109. No action shall lie against the Director General, or any of his officers or any authorised person acting under his direction or control, or against any member of the Council, for any act or omission in connection with this Act, or any regulations made thereunder, unless such act or omission was done in bad faith.

Service of orders or notices under this Act.

Added by:

XXVI. 2000.15.

Amended by:

II. 2008.53.

110. (Deleted by Act VI.2011.108)



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Consumer Affairs Appeals Board.

Added by:

II. 2008.54.

110A. (Deleted by Act VI.2011.110)

Appeal from decisions or orders other than the imposition of an administrative fine of the Director General.

Added by:

II. 2008.54.

Amended by:

VI. 2011.75, 111.

110B. (1) An appeal shall lie to the Appeals Tribunal from a decision, order or measure of the Director General made under this Act.

(2) The right of appeal to the Appeals Tribunal shall be competent to any person aggrieved by the decision, order or measure:

Provided that in any case, a person making an appeal to the Appeals Tribunal shall also explain his juridical interest in impugning the decision, order or measure appealed from.

(3) Without prejudice to the provisions of article 110C -

(a) an appeal from a decision, order or measure of the Director General shall be made by application and shall be filed with the Registrar of the Appeals Tribunal within fifteen days from the date on which the said decision has been notified to the party appealing; and

(b) the application of appeal shall be notified to the Director General, which shall not later than fifteen days from such notification file its reply thereto with the Registrar of the Appeals Tribunal.

Appeals against an administrative fine imposed by the Director General.

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Added by:

II. 2008.54.

Amended by:

VI. 2011.75, 112.

110C. (1) Without prejudice to the provisions of this Part, the procedure to be followed in relation to appeals against administrative fines imposed by the Director General shall be regulated by the provisions of this article.

(2) A person who is notified with a judicial act referred to in article 106A(8) may within fifteen days from the date of such notification lodge an appeal before the Appeals Tribunal objecting to the administrative fine so fixed.

(3) The Appeals Tribunal shall not annul an administrative fine as aforesaid unless such fine cannot at law be imposed in the circumstances of the case, or cannot at law be fixed in the amount established by the Director General due account being given to the principle of proportionality.

(4) The Appeals Tribunal shall, without delay, set down the appeal for hearing at an early date, which date shall in no case be later than thirty days from the date of the service of the appeal on the Director General.

(5) The appeal, and the notification of the date fixed for hearing, shall be notified to the Director General without delay, and the Director General shall file its reply thereto within fifteen days from the date of the notification of the appeal.

(6) The decision of the Appeals Tribunal upon an appeal referred to in subarticle (2) hereof, confirming the imposition of a fine established by the Director General or reducing any such fine, shall upon becoming res judicata be deemed to be a decision of the Appeals Tribunal equivalent to a decision of the First Hall of the Civil Court ordering payment by the appellant of the administrative fine as confirmed or reduced.

(7) There shall be a right of appeal to the Court of Appeal to any of the parties to the proceedings before the Appeals Tribunal in accordance with article 110F.



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Decisions of the Appeals Tribunal.

Added by:

II. 2008.54.

Amended by:

VI. 2011.113.

110D. (1) In determining an appeal the Appeals Tribunal shall take into account the merits of the appeal, and may in whole or in part, confirm or annul the decision, order or measure appealed from, giving in writing the reasons for its decision and shall cause such decision to be made public and communicated to the parties to the appeal.

(2) Subject to the provisions of article 110F, the decisions of the Appeals Tribunal shall be final and binding.

(3) Where the Appeals Tribunal considers that, having regard to its determination of the appeal and all other relevant matters, there are sufficient reasons rendering it equitable to do so, it may, either of its own motion or on application by a consumer being a party to the appeal, order that the whole or part of the costs of any such party appearing before the Appeals Tribunal relating to the engagement of a lawyer and, or of a technical adviser shall be paid to the consumer concerned by any other party to the appeal named in the order.

Procedure of the Appeals Tribunal.

Added by:

II. 2008.54.

Amended by:

VI. 2011.75, 114.

110E. (1) The Appeals Tribunal shall endeavour to determine an appeal within sixty days from the lapse of the period by when the Director General may file its reply to the aforesaid appeal and in any case shall deliver its final decision not later than thirty days from when the parties declare that they have concluded with their evidence and made their final submissions.

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(2) The Minister may by regulations made under this Act, amend any of the periods stated in subarticle (1).

Appeal to the Court of Appeal.

Added by:

II. 2008.54.

Amended by:

VI. 2011.75, 115.

110F. (1) Any party to an appeal to the Appeals Tribunal including the Director General, who feels aggrieved by a decision of the Appeals Tribunal may, on points of law or on grounds of natural justice, appeal to the Court of Appeal by means of an application filed in the registry of that court within fifteen days from the date of the decision of the Appeals Tribunal.

(2) The Minister responsible for justice may by regulation under this subarticle establish the fees payable in the registry of the court in relation to the filing of judicial acts in connection with appeals under this article:

Cap. 12.

Provided that until such fees are so established, the fees in Schedule A to the Code of Organization and Civil Procedure shall apply.

(3) The Board established under article 29 of the Code of Cap. 12. Organization and Civil Procedure may make Rules of Court governing appeals to the Court of Appeal under this article.

Status of decision, order or measure pending an appeal before the Appeals Tribunal or the Court of Appeal.

Added by:

II. 2008.54.

Amended by:

VI. 2011.75, 116.

110G. (1) Any decision, order or measure of the Director General pending an appeal whether before the Appeals Tribunal or the Court of Appeal, shall stand and shall be adhered to by all the

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parties to whom the decision, order or measure applies.

(2) The Appeals Tribunal or the Court of Appeal as the case may be, where it considers it to be appropriate, may on the application of a party to the appeal, suspend the decision, order or measure of the Director General pending the final determination of the appeal. The Appeals Tribunal or the Court of Appeal in deciding to suspend the decision, order or measure shall state their reasons for doing so:

Provided that in the case of a compliance order, the Appeals Tribunal or the Court of Appeal may, pending the outcome of the case, modify the compliance order as it deems necessary instead of suspending it.

Notification and publication of decisions.

Added by:

VI. 2011.118.

Cap. 510.

110H. (1) Any decision or order of the Director General delivered in accordance with the provisions of this Act shall be notified to the parties concerned and to the complainant in accordance with article 64 of the Malta Competition and Consumer Affairs Authority Act, due regard being had to business secrets or other confidential information.

(2) The Appeals Tribunal and the Director General shall publish without undue delay the decisions or orders taken under this Act and in doing so the Appeals Tribunal and the Director General shall have regard to the legitimate interest of the parties concerned in the protection of their business secrets or other confidential information.

(3) Any decision delivered by the Appeals Tribunal in proceedings held before it shall be deemed to be notified to the parties on the date on which it is pronounced.

(4) The Appeals Tribunal shall provide:

(a) both a complete version and a non-confidential version of its decision on paper or on any other durable

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medium to the Director General; and

(b) a copy of its decision, upon request, to the parties to the case, ensuring in so doing the protection of business secrets or other confidential information.

Amended by:

XXVI. 2000.14.

II. 2008.25;

VI. 2011.118.

PART XII

Miscellaneous

Director General to administer certain laws.

Amended by:

XIX.1996.10;

XXVI. 2000.14;

VI. 2011.75.

Cap. 313.

Cap. 317.

111. The Director General shall be responsible for the administration of the Trade Descriptions Act and the Doorstep Contracts Act.

Commercial Practices which are ipso jure unfair

Misleading commercial practices

1. Claiming to be a signatory to a code of conduct when the trader is not.
2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.
4. Claiming that a trader, including his/her commercial practices, or a product has been approved, endorsed or authorised by a public or private body when he/she/ it has not, or making such a claim without complying with the terms of the approval, endorsement or authorisation.
5. Making an invitation to purchase products at a specified price without

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disclosing the existence of any reasonable grounds the trader may have for believing that he/she will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).

6. Making an invitation to purchase products at a specified price and then:

- (a) refusing to show the advertised item to consumers; or
- (b) refusing to take orders for it or deliver it within a reasonable time; or
- (c) demonstrating a defective sample of it, with the intention of promoting a different product (bait and switch).

7. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

8. Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.

9. Stating or otherwise creating the impression that a product can legally be sold when it cannot.

10. Presenting rights given to consumers by law as a distinctive feature of the trader's offer.

11. Without prejudice to the provisions of the Broadcasting Act (Cap. 350) and any regulations made thereunder, using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).

12. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal safety or security of the consumer or his family if the consumer does not purchase the product.

FIRST SCHEDULE Added by:

II. 2008.55.

(Article 51B(4))

13. Promoting a product similar to a product made by a particular manufacturer

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in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.

14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.

15. Claiming that the trader is about to cease trading or move premises when he is not.

16. Claiming that products are able to facilitate winning in games of chance.

17. Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.

18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product, with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.

19. Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.

20. Describing a product as "gratis", "free", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

21. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not.

22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.

23. Creating the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.

Aggressive commercial practices

24. Creating the impression that the consumer cannot leave the premises until a contract is formed.

25. Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation. This is without prejudice to article 5A of the Doorstep Contracts Act (Cap. 317).

26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national

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law to enforce a contractual obligation. This is without prejudice to regulations 8 and 9 of the Distance Selling Regulations (S.L. 378.08) and the Data Protection Act (Cap. 440) and the Processing of Personal Data (Electronic Communications Sector) Regulations (S.L. 440.01).

27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant in determining whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.

28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. This provision is without prejudice to rule 6 of the Broadcasting Code for the Protection of Minors (S.L. 350.05).

29. Demanding immediate or deferred payment for, or the return or safekeeping of, products supplied by the trader, but not solicited by the consumer (inertia selling).

30. Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.

31. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either:

- there is no prize or other equivalent benefit, or
- taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

Administrative fines

1. In determining the amount of the administrative fine specified in article 106A, the Director General shall be guided by the following considerations.

Infringements under articles 51F, 52A and 53

2. For infringements under articles 51F, 52A and 53, the basic amount of the fine shall be two thousand, three hundred and fifty euro (€2,350):

Provided that the Director General may, in setting the fine, take into account circumstances that may lead to an increase or decrease in the basic amount:

Provided further that the Director General shall do so on the basis of an overall assessment which takes into account all the relevant circumstances.

3. The Director General may impose a higher administrative fine than the basic amount where there are aggravating circumstances, having regard to the gravity and

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duration of the infringement and, or the amount of gains improperly made as a result of the infringement.

4. Without prejudice to the generality of rule 3, the following shall in all cases be deemed as aggravating circumstances:

- where the infringement is an unfair commercial practice listed in the First Schedule, the basic amount shall be increased by a sum not less than one thousand, seven hundred and fifty euro (€1,750) and not more than four thousand, six hundred and fifty euro (€4,650);
- in the case of a second or subsequent infringement, the basic amount shall be increased by two thousand, three hundred and fifty euro (€2,350) for each and every subsequent infringement;

SECOND SCHEDULE Added by:

II. 2008.56.

Amended by:

VI. 2011.75, 119.

(Article 106A(3))

- where the practice or scheme constituting the infringement is the principal means by which the trader runs or operates his business, the basic amount shall be increased by a sum not less than one thousand, seven hundred and fifty euro (€1,750) and not more than four thousand, six hundred and fifty euro (€4,650);
- where the practice or scheme constituting the infringement is specifically targeting vulnerable consumers, the basic amount shall be increased by two thousand, three hundred and fifty euro (€2,350);
- where the unfair commercial practice is accompanied by any of the factors listed in article 51E(2) of the Act, the basic amount shall be increased by a sum not less than one thousand, seven hundred and fifty euro (€1,750) and not more than four thousand, six hundred and fifty euro (€4,650).

5. The basic amount may be decreased where the Director General finds that there are mitigating circumstances, in particular:

- where the person concerned provides evidence that he/she terminated the unfair commercial practice constituting the infringement as soon as the Director General commenced investigations under article 14A of the

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Act, the basic amount shall be decreased by not more than twenty per centum;

- where the person concerned provides evidence that he/she has taken adequate steps to reduce the negative effects of the infringement, the basic amount shall be decreased by not more than ten per centum.

6. The final amount of the administrative fine shall not, in any event, exceed forty-seven thousand euro (€47,000) or be lower than four hundred and seventy euro (€470).

7. Where the person who is served with a notice in terms of article 106A(7) of this Act, elects to pay the administrative fine without contestation, the final amount of the administrative fine determined in accordance with the above rules shall be decreased by not more than twenty per centum:

Provided that this rule shall not apply in the case of second or subsequent infringements.

Infringements under article 12.

8. For the infringement referred to in article 12, the amount of the fine shall not be less than four thousand six hundred and fifty euro (€4,650) and not more than eleven thousand six hundred and fifty euro (€11,650).

Infringements under article 14B.

9. For the infringement referred to in article 14B, the amount of the fine shall not be less than four thousand six hundred and fifty euro (€4,650) and not more than eleven thousand six hundred and fifty euro (€11,650).

Infringements under article 94.

10. For the infringement referred to in article 94, the amount of the fine shall not be less than four thousand six hundred and fifty euro (€4,650) and not more than twenty-three thousand three hundred euro (€23,300):

Provided that in the case of non-compliance, the Director General may also impose a daily fine of not less than one hundred and twenty euro (€120) and not more than two hundred and thirty euro (€230) for each day of non-compliance.