

Naghti l-kunsens tieghi.

(L.S.)

GUIDO DE MARCO
President

17 ta' Ottubru, 2000

ATT Nru. XXVI ta' l-2000

ATT biex jemenda l-Att dwar l-Affarijiet tal-Konsumatur, Kap. 378, u sabiex jipprovdi għal hwejjeg oħra ancillari u konsegwenzjali għalih.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f' dan il-Parlament, u bl-awtorità ta' l-istess, hareg b'ligi dan li ġej:-

1. (1) It-titolu ta' dan l-Att hu l-Att ta' l-2000 li jemenda l-Att dwar l-Affarijiet tal-Konsumatur, u għandu jftiehem u jinqara haġa wahda ma' l-Att dwar l-Affarijiet tal-Konsumatur, hawnhekk iżjed 'il quddiem imsejjah "l-Att prinċipali".

Titolu fil-qosor u bidu fis-sehh.
Kap. 378.

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għall-Affarijiet tal-Konsumatur jista' jstabbilixxi b'avviż fil-Gazzetta, u jistgħu jiġu hekk stabbiliti dati differenti għal provvedimenti differenti u għal għanijiet differenti ta' l-Att.

2. L-artikolu 2 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 2 ta' l-Att prinċipali.

(a) minflok it-tifsira ta' "konsumatur" għandha tidhol din it-tifsira li ġejja:

“konsumatur” tfisser -

(i) kull individwu li fi transazzjonijiet u hwejjeg oħra koperti b'dan l-Att jew b'regolamenti magħmulin tahtu, jkun qed jaġixxi għal għanijiet li ma jkollhomx x'jaqsmu mal-kummerċ, negozju, sengħa jew professjoni; u

(ii) kull individwu iehor li ma jkunx ix-xerrej jew benefiċjarju dirett, u sew jekk ikunx jew le membru tal-familja tal-konsumatur, li ghax ikun espressament jew taċitament awtorizzat jew permess mill-konsumatur, seta' kkonsma, uza jew ibbenefika minn xi oġġetti jew servizzi pprovduti lill-konsumatur minn kummerċjant li jkun qed jaġixxi fil-kors ta' xi kummerċ, negozju, sengha jew professjoni, inklużi oġġetti jew servizzi li jiġu pprovduti bhala parti minn skemi ta' rigali u thajjir iehor simili jew analogu; u

(iii) kull klassi jew kategorija ohra ta' persuni sew naturali sew ġuridiċi li jistgħu, minn żmien għal żmien, jissemmew bhala "konsumaturi" għal kull raġuni jew xi wahda mir-raġunijiet ta' dan l-Att b'regolamenti magħmulin mill-Ministru wara li jikkonsulta lill-Kunsill;";

(b) minnufih wara t-tifsira ta' "konsumatur" għandha tidhol din it-tifsira ġdida li ġejja:

“ "korp kwalifikanti" tfisser ghaqda ta' konsumaturi registrata u kull korp iehor sew kostitwit f'Malta jew xort'ohra hekk kif il-Ministru jista', wara li jikkonsulta lill-Kunsill, jinnomina b'avviz fil-Gazzetta;";

(ċ) minflok it-tifsira ta' "kummerċjant" għandha tidhol din it-tifsira li ġejja:

“ "kummerċjant" tfisser -

(i) kull persuna, inkluż korp magħqud jew mhux magħqud, li għar-rigward ta' kull transazzjoni jew haġ'ohra koperta b'dan l-Att jew regolamenti magħmulin tahtu tkun qegħda taġixxi għal raġunijiet li jkollhom x'jaqsmu mal-kummerċ, negozju, sengha jew professjoni tiegħu;

(ii) kull persuna li għaliha japplika l-artikolu 4 tal-Kodiċi tal-Kummerċ:

Iżda l-Ministru wara li jikkonsulta lill-Kunsill jista' minn żmien għal żmien b'Ordni li jippubblika fil-Gazzetta, isemmi bhala "kummerċjant" għall-ghanijiet kollha ta' l-Att, lil kull kategorija jew klassi ta' persuni u lil kull korp magħqud jew mhux magħqud sew jekk imwaqqaf b'ligi sew jekk le. Ordni li jsir mill-Ministru kif imsemmi qabel jista' jiġi emendat, sostitwit jew revokat b'Ordni iehor bħalu;";

(d) minflok it-tifsira ta' "ogġetti" ghandha tidhol din it-tifsira li ġejja:

“ “ogġetti” tinkludi kull proprjetà mobbli, sew tangibbli sew intangibbli, li jista' jsir kummerċ minnha, inklużi annimali u hut ta' liema speċi jkun kemm haj kemm mejjet;”;

(e) minnufih wara t-tifsira ta' "ogġetti" ghandha tidhol din it-tifsira li ġejja:

“ “pattijiet” tinkludi kull kondizzjoni jew htieġa f'kull kuntratt, avviż, garanzija jew dikjarazzjoni ohra, sew jekk dawn jinghataw bil-fomm sew bil-miktub;”;

(f) minnufih wara t-tifsira ta' "residenti permanenti" ghandha tidhol din it-tifsira li ġejja:

“ “riklam” tfisser kull rappreżentazzjoni, inklużi katalogu, ċirkolari u lista ta' prezzijiet, dwar xi kummerċ, negozju, sengha jew professjoni sabiex tingieb 'il quddiem il-provvista jew it-trasferiment ta' ogġetti jew servizzi, proprjeta` immobbli, drittijiet jew obbligazzjonijiet u “reklamar” ghandha tiftiehem skond hekk;” u

(g) minnufih wara t-tifsira ġdida ta' "riklam" ghandha tidhol din it-tifsira ġdida li ġejja:

“ “servizzi” tinkludi l-provdiment, fil-kors jew bi tkompliġa ta' xi kummerċ, negozju, sengha jew professjoni, ta' kull ghamla ta' kors edukattiv, professjonali jew istruttiv, faċilitajiet għall-mogħdija ta' żmien, divertiment, rikreazzjoni, attivitajiet sportivi u kulturali, programmi dwar l-estetika, is-saħħa u affarijiet li ghandhom x'jaqsmu man-nutrimient, servizzi ta' sptar u ta' infermerija, akkommodazzjoni u faċilitajiet analogi, ta' kull ghamla, u t-twettiq, bi tkompliġa ta' xi kummerċ, negozju, sengha jew professjoni, ta' kull ghamla ohra ta' xi xogħol jew xi azzjoni bi skambju għal hlas jew xi rigal;”.

3. L-artikolu 4 ta' l-Att prinċipali ghandu jigi emendat kif ġej:

(a) il-paragrafu (b) tas-subartikolu (7) tieghu ghandu jithassar u l-paragrafi (ċ) sa (e) ta' dak is-subartikolu ghandhom jiġu enumerati mill-ġdid, rispettivament bhala l-paragrafi (b) sa (d); u

Emenda ta' l-artikolu 4 ta' l-Att prinċipali.

(b) fis-subartikolu (9) tiegħu minflok il-kliem “fid-Dipartiment” għandhom jidhlu l-kliem “fis-servizz pubbliku”.

Sostituzzjoni ta' l-artikolu 7 ta' l-Att prinċipali.

4. Minflok l-artikolu 7 ta' l-Att prinċipali għandu jidhol dan li ġej:

“Setgħa ta' għemil ta' regolamenti.

7. (1) Il-Ministru jista', wara li jikkonsulta lill-Kunsill, jagħmel regolamenti dwar kull haga li tolqot l-affarijiet tal-konsumatur sabiex jagħti effett iktar shih lill-provvedimenti ta' dan l-Att, u b'mod partikolari, iżda mingħajr preġudizzju għall-ġeneralità ta' dak hawn aktar qabel imsemmi, huwa jista' jippreskrivi regolamenti:

(a) dwar kull aspett li jirrigwarda l-provdiment ta' xi servizz, jew il-bejgħ jew kiri ta' oġġetti offruti jew forniti lill-konsumaturi; li jistabbilixxu *standards* ta' servizz minimi u htigiet ta' indikazzjoni ta' prezzijiet għar-rigward ta' dawk l-oġġetti jew servizzi, u li tiġi stipulata kull htieġa oħra sabiex tittejjeb it-trasparenza fil-prezzijiet u l-informazzjoni għall-konsumatur, u biex jinġieb 'il quddiem paragon iktar faċli bejn l-oġġetti jew is-servizzi differenti li jkunu offruti lill-konsumaturi;

(b) li jistabbilixxu regoli ta' prattika għal għaqdiet ta' konsumaturi reġistrati;

(c) li jirregolaw ir-reklamar u kull prattika oħra simili sabiex jiġi żgurat li r-reklamar u kull prattika oħra simili jkunu ġusti u li ma jkunux jiehdu vantaġġ mhux dovut fuq il-konsumaturi;

(d) li jirregolaw skemi ta' bolol tal-kummerċ, skemi ta' rigali, offerti speċjali, attivitajiet promozzjonali ta' bejgħ u skemi oħra simili, arrangamenti u attivitajiet, ikunu kif ikunu deskritti jew imsemmija, konnessi, anċillari jew relatati mal-provdiment ta' xi servizz jew mal-bejgħ jew il-kiri ta' oġġetti lill-konsumaturi u transazzjonijiet oħra konsumistiċi, inklużi skemi li jkunu jinvolvu l-użu u l-promozzjoni ta' *units*, kupuni, punti, *tokens*, *vouchers*, punti, bolol jew kull għamla oħra ta' kumpens, rigal, shubija, incentiv, thajjir jew benefiċċju ieħor, sew bi flus sew in natura, u kemm jekk dawn jistgħu jiġu skambjati, mifdija jew xort'oħra, li jinħarġu jew jitqassmu lil konsumaturi f'konnessjoni, sew direttament sew indirettament, max-xiri jew il-kiri ta' oġġetti jew servizzi jew transazzjonijiet oħra mal-konsumatur;

(e) li jirregolaw arrangamenti ta' bejgh remot u l-ghemil ta' kull ftehim meta l-konsumatur u l-kummerċjant ikunu jinsabu 'l boghod minn xulxin, u ghal dan l-ghan biex jistipulaw il-proċedura biex ikun jista' jsir kull ftehim ta' bejgh remot, biex jipprovdu dwar li jiġu inklużi jew li jithallew barra xi pattijiet u kondizzjonijiet partikolari, biex jistabbilixxu żmien ta' tregwa għall-konsumaturi, biex jistabbilixxu livelli u eżenzjonijiet, u biex jistabbilixxu drittijiet konsumistiċi minimi, u biex jintroduċu miżuri biex jagħmlu offerti għal kull ftehim tali aktar trasparenti u informattivi, u biex jirregolaw kull aspett ieħor ta' bejgh remot; u

(f) biex jirregolaw offerti ta' kreditu lill-konsumatur u l-ghemil ta' kull ftehim għall-provdiment ta' pattijiet u faċilitajiet ta' kreditu minn kummerċjanti jew persuni oħra lill-konsumaturi fil-kors ta' xi kummerċ, negozju, sengħa jew professjoni dwar, direttament jew indirettament, il-bejgh jew l-offerta ta' oġġetti, proprjeta immobbli jew servizzi, biex jistipulaw il-forma u l-proċedura kif għandu jsir kull ftehim ta' kreditu lill-konsumatur, biex jistipulaw u jirregolaw il-pattijiet u l-kondizzjonijiet li jistghu jew ma jistghux jiġu adottati f'kull tali ftehim, biex jistabbilixxu livelli u eżenzjonijiet, il-metodu ta' kalkolu tan-nefqa għall-kreditu, ir-reklamar, u miżuri oħra li jitqiesu meħtieġa jew adattati biex jiġu stabbiliti l-inqas drittijiet għad-debituri u biex jagħmlu l-offerti ta' kreditu iktar trasparenti u informattivi, u biex jirregolaw kull aspett ieħor ta' arrangamenti ta' kreditu lill-konsumatur.

(2) Regolamenti li jsiru taħt dan l-artikolu jistghu jipprovdu wkoll għall-assenjament tas-setgħa u l-awtorità lid-Direttur u lill-Kunsill, jew lil min ikun minnhom, biex jikkontrolla, jissorvelja, jibqa' jiehu konjizzjoni jew jipprojbixxi kull skema, ftehim, attività jew arrangament, inkluża s-setgħa li jawtorizza, jeħtieġ liċenza, jissospendi, jirrestringi u biex jordna l-emenda, l-projbizzjoni, s-sospensjoni, l-irtirar jew it-thassir ta' xi skema, ftehim, attività jew arrangament partikolari, jew ta' xi klassi jew kategorija partikolari tagħhom, u biex jimponi kull kondizzjoni u ħtieġa f'konnessjoni ma' dan.

(3) Regolamenti li jsiru taħt dan l-artikolu jistghu jipprovdu li kull min jikser xi provvediment tar-regolamenti jkun hati ta' reat, u jistghu jippreskrivu pieni għal dawk ir-reati kontra kull regolament, sakemm il-piena għal dawk ir-

reati ma ghandha f'ebda każ teċċedi multa ta' aktar minn elfejn lira Maltija. Jistgħu jiġu preskritti pieni differenti għal reati differenti.”.

Emenda ta' l-
artikolu 8 ta' l-Att
prinċipali.

5. Fis-subartikolu (1) ta' l-artikolu 8 ta' l-Att prinċipali minflok il-kliem “jista”, bi qbil mal-Kunsill, fuq inizjattiva tiegħu jew fuq proposta tal-Kunsill, jagħmel” għandhom jidhlu l-kliem “jista”, bi qbil maċ-*Chairman* f'każ ta' urgenza, jew tal-Kunsill, jagħmel”.

Emenda ta' l-
artikolu 9 ta' l-Att
prinċipali.

6. Fis-subartikolu (3) ta' l-artikolu 9 ta' l-Att prinċipali l-kliem “jew għal żmien ta' prigunerija ta' mhux iżjed minn sitt xhur jew għal dik il-multa u prigunerija flimkien” għandhom jithassru.

Emenda ta' l-
artikolu 12 ta' l-Att
prinċipali.

7. L-artikolu 12 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) minnufih fi tmiem is-subartikolu (1) tiegħu għandhom jiddiedu dawn il-kliem:

“Il-garanzija għandu jkun fiha dawk il-pattijiet u kondizzjonijiet oħra li jista' jkun hemm ftehim dwarhom, inkluż, fejn iċ-ċirkostanzi jkunu hekk jehtieġu, l-għoti ta' kumpens lil konsumaturi milqutin.”; u

(b) fis-subartikolu (4) tiegħu, minflok il-kliem “ikun hati ta' reat” għandhom jidhlu l-kliem “jkun, minghajr preġudizzju għal xi responsabbiltà li titnissel minn din il-liġi jew xi liġi oħra, hati ta' reat”, u minflok il-kliem “hamsin lira Maltija” għandhom jidhlu l-kliem “mitt lira Maltija”.

Emenda ta' l-
artikolu 13 ta' l-Att
prinċipali.

8. L-artikolu 13 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu, minflok il-kliem “id-Direttur jista'” għandhom jidhlu l-kliem “id-Direttur, jew uffiċjal tad-Dipartiment li jkun debitament awtorizzat li jaġixxi minfloku, jista'”; u

(b) fis-subartikolu (3) tiegħu, minnufih wara l-kliem “Id-Direttur” għandhom jidhlu l-kliem “jew l-uffiċjal prosekutur”.

Emenda ta' l-
artikolu 20 ta' l-Att
prinċipali.

9. L-artikolu 20 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok il-kliem “hames mitt lira Maltija” kulfejn dawn jinsabu, għandhom jidhlu l-kliem “elf u hames mitt lira Maltija”;
u

(b) fis-subartikolu (1) minflok il-kliem “tohroġ minn jew tkun dwar” ghandhom jidhlu l-kliem “tohroġ minn jew tkun dwar, sew direttament sew indirettament”.

10. Fis-subartikolu (1) ta' l-artikolu 22 ta' l-Att prinċipali, minflok il-kliem minn “mid-data tad-deċiżjoni” sa tmiem is-subartikolu, ghandhom jidhlu l-kliem “mid-data tad-deċiżjoni quddiem il-Qorti ta' l-Appell magħmul skond id-dispożizzjonijiet tas-subartikolu (6) ta' l-artikolu 41 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jew ta' kull dispożizzjoni li tidhol minfloku.”.

Emenda ta' l-artikolu 22 ta' l-Att prinċipali.

11. L-artikolu 23 ta' l-Att prinċipali ghandu jigi emendat kif ġej:

Emenda ta' l-artikolu 23 ta' l-Att prinċipali.

(a) fil-paragrafu (e) tas-subartikolu (2) tiegħu:-

(i) minflok il-kliem “il-ġurament.” ghandhom jidhlu l-kliem “il-ġurament; u”; u

(ii) minnufih wara l-paragrafu (e) ghandu jidhol dan li ġej:

“(f) ghandu jiżgura li x-xiehda quddiem it-Tribunal ghandha f'kull każ tinghata bil-ġurament.”; u

(b) fis-subartikolu (4) tiegħu:-

(i) fil-paragrafu (a) tiegħu minflok il-kliem “lid-Direttur” ghandhom jidhlu l-kliem “lid-Direttur jew lil xi ghaqda ta' konsumaturi reġistrata”; u

(ii) fil-paragrafu (b) tiegħu minflok il-kliem “lid-Direttur” ghandhom jidhlu l-kliem “lid-Direttur jew lill-ghaqda ta' konsumaturi reġistrata, skond il-każ”.

12. Minnufih fi tmiem is-subartikolu (1) ta' l-artikolu 25 ta' l-Att prinċipali ghandu jidhol dan il-proviso li ġej:

Emenda ta' l-artikolu 25 ta' l-Att prinċipali.

“Izda meta l-Arbitru jkun sodisfatt li talba pprezentata quddiem it-Tribunal jew id-difiża ghar-rigward tagħha tkun wahda vessatorja jew frivola, huwa jista' jordna lill-parti li tagħmel it-talba jew lill-intimat, skond il-każ, biex thallas lill-parti l-oħra penali ta' mhux iktar minn hamsin lira Maltija (Lm50). Kull ordni bħal dik ghandha tkun motivata u esegwibbli bl-istess mod bhallikieku kienet deċiżjoni tat-Tribunal.”.

13. Fil-paragrafu (a) ta' l-artikolu 28 ta' l-Att prinċipali, minflok il-kliem “mitejn u hamsin membru” ghandhom jidhlu l-kliem “mitt membru”.

Emenda ta' l-artikolu 28 ta' l-Att prinċipali.

Enumerazzjoni mill-
ġdid tat-Taqsima V
ta' l-Att prinċipali.

14. (a) Minflok l-intestatura "Taqsim V Mixellanji" li hemm qabel l-artikolu 43 ta' l-Att prinċipali ghandu jidhol dan li ġej:

**"TAQSIMA XI
Mixellanji"; u**

(b) L-artikoli 43 sa 45 ta' l-Att prinċipali ghandhom jiġu enumerati mill-ġdid bhala l-artikoli 111 sa 113 rispettivament.

Żieda tat-Taqsimiet
V, VI, VII, VIII, IX
u X godda ma' l-Att
prinċipali.

15. Dawn it-Taqsimiet godda li ġejjin ghandhom jizjeddu minnufih wara l-artikolu 42 ta' l-Att prinċipali:

Minnufih wara l-artikolu 42 ta' l-Att prinċipali ghandu jizjedded dan li ġej:

"TAQSIMA V

DIKJARAZZJONI TA' PRINĊIPJI

Drittijiet
favur il-
konsumatur.

43. (1) Il-prinċipji dikjarati fis-subartikolu (2) ta' dan l-artikolu ma ghandhomx ikunu direttament esegwibbli f'xi qorti jew tribunal, iżda ghandhom jinżammu fl-interpretazzjoni u l-implementazzjoni ta' dan l-Att u tar-regolamenti kollha maghmula tahtu.

(2) Il-konsumaturi jkollhom dritt:

(a) ghal aċċess adegwat ghal oġġetti u servizzi essenzjali bażiċi bi prezzijiet raġonevoli u li jkunu jistgħu jagħzlu minn firxa wiesgħa ta' oġġetti u servizzi;

(b) li jkunu protetti minn oġġetti, proċessi ta' produzzjoni u servizzi li jagħmlu hsara lis-saħħa;

(ċ) ghal aċċess adegwat ghal informazzjoni dwar oġġetti jew servizzi li tkun ċara, korretta u ma tqarraqx;

(d) li jikkomponu u jinghaqdu ma' għaqdiet favur il-konsumatur u li kull interess favur il-konsumatur jiġi rappreżentat fl-għemil u l-eżekuzzjoni ta' *policy* governattiva, u fl-iżvilupp ta' oġġetti u servizzi;

(e) għal protezzjoni minn kull Prattika ta' kummerċ mhux legali jew mhux ġust

(f) li talbiet ġustifikati jiġu rranġati b'mod ġust inkluż il-kumpens adegwat għal rappreżentazzjoni hażina, oġġetti diżutli jew servizzi mhux sodisfaċenti; u

(g) għal rimedju effettiv, imghaġġel u bi spejjeż baxxi fit-tilwim li jista' jkollhom mal-kummerċjanti.

(3) Konsumatur ma jista' jwarrab ebda dritt stabbilit favurih minn jew taht dan l-Att.

TAQSIMA VI

ATTIJET MHUX ĠUSTI

Espressjonijiet
projbiti.

44. (1) Ma jistgħux jintużaw f'kuntratti li jsiru mal-konsumatur espressjonijiet mhux ġusti, jew espressjonijiet jew kombinazzjoni ta' espressjonijiet li jkunu mhux ġusti f'illi jkollhom bhala skop jew effett xi wiehed mill-iskopijiet u effetti msemmija fis-subartikolu (2) ta' dan l-artikolu, u kull espressjoni pprojbata kif hawn aktar qabel imsemmi li tiddaħhal f'xi kuntratt li jsir mal-konsumatur għandha titqies bhallikieku qatt ma tkun hekk iddaħhlet.

(2) L-espressjonijiet imsemmiya fis-subartikolu (1) ta' dan l-artikolu jinkludu espressjonijiet li jkollhom l-iskop jew l-effett li:

(a) jeskludu jew jillimitaw ir-responsabbiltà ta' kummerċjant minhabba fil-frodi jew in-negliġenza gravi tiegħu nnifsu jew dik ta' l-impjegati jew l-agenti tiegħu, jew minhabba f'xi nuqqas li jwettaq xi obligazzjoni li tkun tikkostitwixxi xi wiehed mill-elementi fundamentali tal-kuntratt;

(b) jistabbilixxu perjodu, li jkun b'mod xejn raġonevoli wiehed qasir, li fih il-kummerċjant ikun jista' jiġi avżat b'xi difetti ;

(c) jeskludu jew jillimitaw id-drittijiet legali ta' konsumatur kontra l-kummerċjant fil-każ ta' nuqqas totali jew parzjali ta' twettiq jew ta' twettiq inadegwat mill-kummerċjant ta' xi wahda mill-obbligazzjonijiet kontrattwali tiegħu;

(d) jipprojbixxu lill-konsumatur mit-tpaciġa ta' xi dejn dovut lill-kummerċjant dwar xi talba li l-konsumatur jista' jkollu kontra l-istess kummerċjant;

(e) jaghmlu xi ftehim li jkun jorbot lill-konsumatur filwaqt li l-provdiment ta' servizzi jew oġġetti mill-kummerċjant jkun sugġett għal xi kondizzjoni li r-realizzazzjoni tagħha tkun tiddependi biss mir-rieda tal-kummerċjant;

(f) jippermettu lill-kummerċjant li jzomm ammonti mħallsa mill-konsumatur jekk il-konsumatur jiddeċiedi li ma ghandux jikkonkludi jew iwettaq il-kuntratt, minghajr ma jiġi pprovdut għall-konsumatur li jirċievi kumpens f'ammont ekwivalenti minghand il-kummerċjant meta l-kummerċjant ikun dik il-parti li tkun qeghda thassar il-kuntratt;

(g) jehtieġu lil konsumatur li jkun naqas milli jwettaq l-obbligazzjoni tiegħu, li jhallas b'kumpens lill-kummerċjant ammont li jkun sproporzjonatament għoli hdejn il-valur ta' l-oġġetti jew is-servizzi mixtrijin jew mikrijin;

(h) jistabbilixxu l-kumpens li għandu jithallas minn konsumatur li jkun naqas li jwettaq l-obbligazzjonijiet tiegħu, minghajr ma jipprovdu għal kumpens daqsinsaw mill-kummerċjant li jkun naqas mill-istess haġa;

(i) jillimitaw il-mezzi ta' provi li l-konsumatur jista' jġib;

(j) jġieghlu lill-konsumatur iwarrab xi raġuni għal xi talba kontra l-kummerċjant f'każ ta' tilwima;

(k) jipprojbixxu lill-konsumatur milli jikseb it-thassir tal-kuntratt jekk il-kummerċjant jonqos milli jwettaq l-obbligazzjonijiet tiegħu;

(l) jirrestringu d-dritt tal-konsumatur li jhassar il-kuntratt jekk il-kummerċjant, f'dak li għandu x'jaqsam ma' kull garanzija mogħtija, ma jwettaqx l-obbligazzjoni tiegħu jew jonqos milli hekk jagħmel f'perjodu raġonevoli;

(m) ikunu irrevokabilment jorbtu lill-konsumatur b'pattijiet li ma kellu ebda opportunità reali li jifhem sew qabel ma jagħmel il-kuntratt;

(n) bihom il-kummerċjant ikun jista' jibdel il-pattijiet ta' kuntratt unilateralment, mingħajr ebda raġuni valida li tkun speċifikata fil-kuntratt;

(o) bihom il-kummerċjant ikun jista' jibdel unilateralment, mingħajr ebda raġuni valida, il-karatteristiċi tal-prodott jew tas-servizz li jkun se jiġi pprovdut;

(p) jipprovdu għall-prezz ta' l-oġġetti li jiġi stabbilit fil-waqt tal-kunsinna mill-kummerċjant jew li jkunu jippermettulu li jżid il-prezz mingħajr f'kull każ ma jagħti lill-konsumatur id-dritt korrispondenti li jhassar il-kuntratt jekk il-prezz finali jkun daqstant għoli kif imqabbel mal-prezz miftiehem meta jkun sar il-kuntratt;

(q) jagħtu lok li l-prezz jinbidel minhabba f'fatturi li jkunu jiddependu biss mir-rieda tal-kummerċjant;

(r) jagħtu lill-kummerċjant id-dritt li jistabbilixxi unilateralment jekk l-oġġetti jew is-servizzi mogħtija jkunux konformi mal-kuntratt;

(s) jagħtu lill-kummerċjant id-dritt esklużiv li jinterpretaw xi frażi mill-kuntratt;

(t) jillimitaw jew jeliminaw l-obbligazzjoni tal-kummerċjant li jirrispetta rabtiet li jkunu għamlu l-aġenti jew l-impjegati tiegħu;

(u) jobbligaw lill-konsumatur li jwettaq l-obbligazzjonijiet tiegħu fejn il-kummerċjant ma jwettaqx tiegħu;

(v) jippermettu lill-kummerċjant il-possibiltà li jittrasferixxi d-drittijiet u l-obbligazzjonijiet kollha tiegħu taht il-kuntratt fejn dan jista' jservi biex inaqqas kull garanzija li l-konsumatur ikollu, mingħajr il-kunsens tal-konsumatur;

(w) jipprovdu dwar li jkun hemm xi rabta immedjata u finali mill-konsumatur malli jiffirma l-kuntratt, filwaqt li l-kummerċjant jidhol fil-kuntratt kif sugġett għal xi kondizzjoni li t-twettiq tagħha jkun jiddependi biss mir-rieda tal-kummerċjant; u

(x) jippermettu lill-kummerċjant li jistabbilixxi jew ibiddel unilateralment iż-żmien li fih jikkunsinna oġġetti jew jipprovdi xi servizz.

(3) Il-Ministru jista', wara li jikkonsulta lill-Kunsill, b'regolamenti jemenda, jissostitwixxi jew jirrevoka xi waħda mill-espressjonijiet elenkati fis-subartikolu (2) ta' dan l-artikolu.

(4) L-elenku ta' espressjonijiet stipulati fis-subartikolu (2) ta' dan l-artikolu mhix lista eżawrjenti, u għaldaqstant ebda haġa li tinsab fis-subartikolu (1) u (2) ta' dan l-artikolu ma għandha tiftiehem bħala li tillimita jew xort'ohra tippregudika l-ġeneralità tad-dispożizzjonijiet ta' l-artikolu 45 ta' dan l-Att.

(5) F'din it-Taqsima, l-espressjoni "oġġetti" għandha tinkludi proprjetà immobbli.

Tifsira ta' att
mhux ġust.

45. (1) Espressjoni mhux ġusta tfisser espressjoni f'kuntratt li jsir mal-konsumatur, li sew waħidha sew f'rabta ma xi espressjoni waħda jew iktar, ohra:

(a) tohloq żbilanċ sinjifikanti bejn id-drittijiet u l-obbligazzjonijiet tal-partijiet fil-kuntratt b'detriment tal-konsumatur; jew

(b) tikkaguna li t-twettiq tal-kuntratt ikun, b'mod mhux dovut, detrimental għall-konsumatur; jew

(ċ) tikkaguna li t-twettiq tal-kuntratt ikun, b'mod sinjifikanti, differenti minn dak li l-konsumatur jista' raġonevolment jistennih li jkun; jew

(d) tkun inkompatibbli ma' kull htieġa ta' bonafidi.

(2) Il-grad ta' kemm espressjoni ma tkunx waħda ġusta għandu jitqies skond kif ġej:

(a) ix-xorta ta' l-oġġetti jew tas-servizzi li dwarhom ikun sar il-kuntratt;

(b) iż-żmien meta jkun sar il-kuntratt; u

(ċ) iċ-ċirkostanzi kollha li jakkumpanjaw l-ghemil tal-kuntratt u l-espressjonijiet l-oħra kollha tal-kuntratt jew ta' kuntratt ieħor li jkun jiddependi fuqu. Dawk iċ-ċirkostanzi jistgħu wkoll jinkludu:

(i) kemm kull parti tkun taf tinnegozja;

(ii) jekk konsumatur kienx assoġġettat għal xi pressjoni mhux dovuta; u

(iii) jekk in-nuqqas ta' konnoxxenza jew sengħa tal-konsumatur kienux ta' vantaġġ mhux dovut kontrib.

(3) Id-dispożizzjonijiet ta' l-artikolu 44 sa 47 għandhom ikunu japplikaw għal kuntratti magħmula jew esegwiti wara l-bidu fis-seħħ ta' dawn l-artikoli.

X'jiġri meta tiddaħhal espressjoni mhux ġusta jew projbita.

46. Kuntratt li jsir mal-konsumatur li jkun jinkludi xi espressjonijiet projbiti jew mhux ġusti ma jkunx jorbot lill-konsumatur kemm-il darba l-kuntratt ma jkunx jista' jibqa' jeżisti mingħajr dik l-espressjoni mhux ġusta.

Użu ta' lingwaġġ mitkellm f'kuntratt li jsir mal-konsumatur.

47. (1) F'kuntratt li jsir mal-konsumatur, fejn l-espressjonijiet kollha jew x'uħud minnhom li jkunu offruti minn kummerċjant lil konsumatur jkunu bil-miktub, dawk l-espressjonijiet għandhom jinkitbu b'lingwa kif ordinarjament mitkellma u intelligibbli li tista' tiftiehem mill-konsumaturi li l-kuntratt ikun indirizzat lejhom.

(2) Meta xi espressjoni tkun ambivalenti jew ikun hemm xi dubbju dwar it-tifsira ta' xi espressjoni, għandha tipprevalixxi t-tifsira l-iktar favorevoli għall-konsumatur.

Riklami qarrieqa.

48. (1) Kull għamla ta' riklam qarrieqi hija pprojbita.

(2) Riklam ikun qarrieqi jekk b'kull mod li jkun, inkluża l-prezentazzjoni tiegħu, ikun iqarraq jew x'aktarx iqarraq bil-persuni li jkun indirizzat lejhom jew li jkun jilhaq, u jekk minhabba fix-xorta tiegħu li turi haġa b'oħra, x'aktarx li jolqot l-imġieba ekonomika tagħhom jew ikun wiehed li minhabba f'dawk ir-raġunijiet, jagħmel hsara jew x'aktarx jagħmel hsara lil xi kompetitur tal-persuna li r-riklam ikun qed jara li jgħib 'il quddiem l-interessi tagħha.

(3) Sabiex jiġi stabbilit jekk riklam ikunx wiehed qarrieqi għandu jittiehed kont tal-karatteristiċi tiegħu kollha, u b'mod partikolari ta' kull informazzjoni li jista' jkun fih dwar:

(a) il-karatteristiċi ta' oġġetti jew servizzi, inkluża d-disponibilità, ix-xorta, l-eżekuzzjoni, il-kompożizzjoni, il-metodu u d-data tal-manifattura jew provdiment tagħhom, il-konvenjenza għall-iskop tagħhom, l-użu, il-kwantità, l-ispeċifikazzjoni, l-orijni ġeografika jew kummerċjali jew ir-riżultati li jiġu mistennija mill-użu tagħhom, jew ir-riżultati u karatteristiċi materjali ta' testijiet jew verifiki li jkunu saru fuq l-oġġetti jew is-servizzi;

(b) il-prezz jew il-mod li bih jiġi kkalkulat il-prezz, u l-kondizzjonijiet li tahtom jiġu forniti l-oġġetti jew is-servizzi pprovduti;

(ċ) ix-xorta, attributi u drittijiet ta' min jirreklama, inkluża l-identità u l-attiv tiegħu, kemm ikollu kwalifiki u drittijiet industrijali, kummerċjali jew ta' proprjeta' intellettuali jew kull premju jew distinzjoni lilu mogħtija.

(4) Kull min jagħmel riklam qarrieqi jkun hati ta' reat kontra din it-Taqsima ta' l-Att.

Tifsira ta' reklamar komparattiv.

49. (1) "Reklamar komparattiv" tfisser kull reklamar li espliċitament jew b'implikazzjoni jidentifika lil xi kompetitur jew lil xi oġġetti jew servizzi offruti minn kompetitur.

(2) Kull min jagħmel riklam li jkun jikkostitwixxi reklamar komparattiv xort'ohra minn kif inhu permess taht l-artikolu 50 jkun hati ta' reat kontra dan l-Att.

Reklamar komparattiv permess.

50. (1) Ir-reklamar komparattiv għandu, f'dak li għandu x'jaqsam ma' paraguni, jkun permess meta jsehhu dawn il-kondizzjonijiet:

(a) ma jkunx riklam qarrieqi skond l-artikolu 48 jew xort'ohra;

(b) ikun jipparaguna oġġetti jew servizzi li jkollhom l-istess hteġa jew li jkunu maħsubin għall-istess skop;

(ċ) ikun jipparaguna oġġettivament xi wiehed jew iktar mill-karatteristiċi materjali, rilevanti, verifikabbli u rappreżentattivi ta' dawk l-oġġetti u s-servizzi, liema karatteristiċi jistgħu jinkludu l-prezz;

(d) ma jkunx johloq konfużjoni fis-suq bejn min jirreklama u kompetitur jew bejn it-*trade marks*, ismijiet kummerċjali, marki distintivi ohra, oġġetti jew servizzi ta' min jirreklama u dawk ta' kompetitur;

(e) ma jkunx inaqqas mill-kreditu jew imaqdar it-*trade marks*, ismijiet kummerċjali, marki distintivi ohra, oġġetti, servizzi, attivitajiet jew ċirkostanzi ta' kompetitur;

(f) għal prodotti b'tismija ta' oriġni, f'kull każ ikun jirrigwarda prodotti bl-istess tismija;

(g) ma jieħux vantaġġ mhux ġust mir-riputazzjoni ta' xi *trade mark*, isem kummerċjali jew marki distintivi ohra ta' kompetitur jew tat-tismija ta' oriġni ta' prodotti kompetittivi; u

(h) ma jipprezentax oġġetti jew servizzi bħala imitazzjonijiet jew replika ta' oġġetti jew servizzi li jkollhom xi marka protetta jew isem kummerċjali.

(2) Paragun li jirreferi għal xi offerta speċjali għandu jindika b'mod ċar u mhux ekwivoku d-data meta tintemm dik l-offerta jew, fejn ikun xieraq, li l-offerta speċjali tkun sugġetta għad-disponibilità ta' l-oġġetti u s-servizzi, u meta l-offerta speċjali tkun għadha ma bdiex id-data tal-perjodu li matulu għandha tkun tapplika l-offerta speċjali. "Offerta speċjali" f'dan is-subartikolu tirreferi għall-prezz ta' l-oġġetti jew is-servizzi jew xi kondizzjoni speċifika ohra li taħtha l-oġġetti jew is-servizzi ikunu se jiġu forniti.

L-offerta ta' rigali u premjijiet.

51. Kummerċjant li, b'konnessjoni mal-provvista jew possibbli provvista ta' oġġetti jew servizzi jew mal-promozzjoni b'kull mod li jkun tal-provvista jew l-użu ta' oġġetti jew servizzi, joffri rigali, premjijiet, jew oġġetti ohra b'xejn,

(a) jonqos milli jipprovdihom jew ma jipprovdihomx kif offrut; jew

(b) jonqos li jiżvela b'mod ċar il-pattijiet u l-kondizzjonijiet kollha għall-kisba tagħhom; jew

(ċ) jonqos milli jagħti deskrizzjoni ċara u sħiha tar-rigali, premjijiet jew oġġetti oħra b'xejn li jkunu qeghdin jiġu offruti;

jkun hati ta' reat kontra din it-Taqsima ta' dan l-Att.

Skemi ta'
bejgħ
piramidali.

52. (1) Kull forma ta' skemi ta' bejgħ piramidali, jkun kif ikun deskritt, hija projbita. Skemi jew attivitajiet li fihom element materjali jew sinifikattiv ikun jikkonsisti f'attività ta' bejgħ piramidali għandhom jitqiesu wkoll bħala skema ta' bejgħ piramidali għall-finijiet ta' dan l-artikolu.

(2) Min jistabbilixxi, ihaddem jew iġib 'il quddiem xi skema ta' bejgħ piramidali jkun hati ta' reat kontra din it-Taqsima ta' dan l-Att.

(3) Għall-ghanijiet ta' dan l-artikolu, il-frazi "skema ta' bejgħ piramidali" tfisser -

(a) skema -

li tipprovdi għall-provvista ta' oġġetti jew servizzi jew it-tnejn flimkien bi premju;

li għal bosta parteċipanti fl-iskema tkun primarjament tikkostitwixxi opportunità ta' bejgħ ta' opportunità ta' investment pjuttost minn opportunità ta' provvista ta' oġġetti jew ta' servizzi; u

li tkun jew x'aktarx tkun waħda mhux ġusta għal bosta mill-parteċipanti f'dik l-iskema peress li -

(i) l-premjijiet finanzjarji ta' dawk il-parteċipanti jkunu prinċipalment dipendenti fuq l-ingaġġ ta' parteċipanti addizzjonali, sew jekk f'livelli wiehed inqas mill-iehor sew jekk le; u

(ii) l-ghadd ta' parteċipanti addizzjonali fl-iskema li jkollhom jiġu ingaġġati biex jipproduċu premjijiet finanzjarji raġonevoli għall-partiċipanti fl-iskema ma jintlahaqx jew x'aktarx li ma jintlahaqx minn bosta mill-partiċipanti fl-iskema; jew

(b) skema ta' tip simili għal *chain letter*, sew jekk din tippovdi jew ma tippovdix għal provvista ta' oġġetti jew servizzi, li tkun wahda mhux gusta għal bosta mill-partiċipanti fl-iskema peress li -

(i) l-premjijiet finanzjarji ta' bosta mill-partiċipanti jkunu dipendenti fuq l-ingaġġ ta' partiċipanti addizzjonali; u

(ii) l-ghadd ta' partiċipanti addizzjonali fl-iskema li jkollhom jiġu ingaġġati biex jipproduċu premjijiet finanzjarji raġonevoli għall-partiċipanti fl-iskema ma jintlahaqx jew x'aktarx li ma jintlahaqx minn bosta mill-partiċipanti fl-iskema.

(4) Partiċipanti, li ma jkunux dawk imsemmija fis-subartikolu (2) ta' dan l-artikolu, f'xi skema ta' bejgħ piramidali jkollhom jedd mhux iktar tard minn sentejn mid-data meta jkunu għamli l-aħhar hlas li jitolbu l-hlas lura shih ta' kull flus li jkunu hallsu fl-iskema.

Dikjarazzjonijiet
qarrieqa
dwar ċerti
skemi jew
attivitajiet.

53. (1) Min jagħmel xi dikjarazzjoni li tkun falza jew qarrieqa f'xi dettall materjali dwar il-profittabilità jew ir-riskju jew xi aspett materjali ieħor ta' xi skema ta' xogħol domestiku jew skemi jew attivitajiet simili oħra, jkunu kif ikunu deskritti, u jirrappreżenta dik l-iskema bħala wahda li tista' ssir, jew li tista' ssir f'ċertu qies sostanzjali, mill-post ta' residenza ta' xi hadd, jkun hati ta' reat kontra din it-Taqsima ta' dan l-Att.

(2) Min jistieden, sew b'riklam sew xort'oħra, lil xi hadd biex jaħdem jew jipparteċipa, jew biex joffri jew japplika li jaħdem jew jipparteċipa, fi skemi jew attivitajiet bħal dawk imsemmija fis-subartikolu (1) ta' dan l-artikolu li jkunu jeħtieġu -

(a) l-għemil minn min ikun involut ta' xogħlijiet; jew

(b) l-investment ta' flus mill-persuni involuti u l-ghemil minnhom ta' xoghol assoċjat ma' l-investment -

u jagħmel, għar-rigward tal-profittabilità jew ir-riskju jew xi aspett materjali iehor ta' l-attività kummerċjali, xi rappreżentazzjoni li tkun falza jew qarrieqa f'xi dettall materjali, jkun hati ta' reat kontra din it-Taqsima ta' dan l-Att.

Reati. 54. Min ikun hati ta' reat kontra din it-Taqsima ta' dan l-Att jista', meta jinsab hati, jehel multa ta' mhux inqas minn mitejn lira Maltija u ta' mhux iktar minn elfejn lira Maltija.

Applikabilità fuq kull liġi oħra. Kap. 16. Kap. 13. Kap. 313. 55. Il-provvedimenti ta' din it-Taqsima għandhom jipprevalixxu fuq kull haġa li tmur kuntrarju għalih u li tinsab fil-Kodiċi Ċivili, fil-Kodiċi tal-Kummerċ u fl-Att dwar Deskrizzjonijiet Kummerċjali.

TAQSIMA VII

RESPONSABILTA' GĦAL PRODOTTI DIFETTUŻI

Tifsir. 56. F'din it-Taqsima, kemm-il darba r-rabta tal-kliem ma tkunx tehtieg xort'ohra -

“hsara personali” tinkludi kull marda u kull thassir tal-kondizzjoni fiżika jew mentali ta' persuna;

“prodott” tfisser kull haġa mobbli u tinkludi:

(a) kull haġa mobbli inkorporata fi prodott iehor jew f'haġa immobbli,

(b) l-elettriku,

(ċ) il-gass, u

(d) prodotti agrikoli primarji;

“prodotti agrikoli primarji” tfisser kull prodott li tagħti l-art, ta' animali f'razzett u li jiġi mis-sajd u l-kaċċa;

“produttur” tfisser:

- (a) il-manifattur ta' prodott mitmum jew ipproċessat, jew
- (b) il-manifattur ta' parti komponenti, jew
- (ċ) il-produttur ta' xi materja prima, jew
- (d) il-produttur ta' xi prodotti li tagħti l-art, ta' annimali f'razzett u li jiġu mis-sajd u l-kacca, jew
- (e) kull min, għax iqieghed ismu, t-trade mark jew xi dettall distintiv ieħor fuq il-prodott, jippreżenta lilu nnifsu bhala l-produttur tiegħu, jew
- (f) meta prodott jiġi manifatturat jew prodott barra minn Malta, kull min jimporta għewwa Malta prodott għall-bejgħ, kiri, self jew kull għamla oħra ta' distribuzzjoni.

Responsabbiltà tal-produttur.

57. Il-produttur ikun responsabbli għall-ħsara għalkollox jew f'parti kaġunata b'xi difett fil-prodott tiegħu.

Prova dwar ħsara u difett.

58. Il-parti aggravata jkollha biss il-piż li għib prova dwar il-ħsara, id-difett u r-relazzjoni kawżali bejn id-difett u l-ħsara u ma jkollhiex il-piż li għib prova dwar il-ħtija tal-produttur.

Responsabbiltà tal-fornitur tal-prodott.

59. (1) Il-fornitur tal-prodott għandu jitqies bhala l-produttur jekk:

- (a) il-produttur ma jkunx jista' jiġi identifikat u l-parti aggravata tkun talbet lill-fornitur biex jipprovdiha l-identità u l-indirizz shih tal-produttur jew tal-persuna li tkun forniet lill-fornitur bil-prodott, jew
- (b) fil-każ ta' prodott importat meta l-importatur ma jkunx jista' jiġi identifikat ukoll jekk isem il-produttur ikun indikat u l-parti aggravata tkun talbet lill-fornitur biex jipprovdiha l-identità u l-indirizz shih ta' l-importatur jew tal-persuna li tkun forniet lill-fornitur bil-prodott,

u l-fornitur jonqos milli jagħmel dan fi żmien tletin jum minn meta tkun saritlu t-talba.

(2) Talba taht is-subartikolu (1) ta' dan l-artikolu ghandha -

(a) ssir bil-miktub u tintbaghat bil-posta registrata jew b'itra ufficjali fil-post tan-negozju jew tal-kummerc tal-fornitur; u

(b) tindika l-prodott li jkun ikkaguna l-hsara, il-post minn fejn u, jekk ikun possibbli d-data approssimattiva, meta l-prodott ikun gie akkwistat.

(3) Il-fornitur ikollu l-piz li jgib prova li jkun ipprovda lill-parti aggravata bl-informazzjoni mehtiega taht is-subartikolu (1) ta' dan l-artikolu fiz-zmien hemm indikat.

Prodott difettuż. 60. (1) Prodott ikun difettuż jekk dan jonqos milli jipprovdi dik is-sigurezza li persuna jkollha jedd li tistenna minnu fil-qies taç-çirkostanzi kollha, inkluzi:

(a) il-prezentazzjoni tal-prodott, kif ikun tmexxa fis-suq, u kull direzzjoni u twissija li jkunu gew ipprovdu, u

(b) liema użu jista' jkun ragonevolment mistenni mill-prodott, u

(c) iż-zmien meta l-prodott ikun tqiegħed fiç-çirkolazzjoni.

(2) Prodott ma jitqiesx bhala wieħed difettiż biss ghaliex prodott ahjar sussegwentement jitqiegħed fiç-çirkolazzjoni.

(3) Prodott jitqies difettuż jekk dan ma jkunx jipprovdi għas-sigurezza li soltu jiġi provdut dwarha b'mudelli oħra ta' l-istess tip.

Danni li jistghu jiġu rkuprati. 61. Id-danni li jistghu jiġu rkuprati taht din it-Taqsima huma:

(a) danni kaġunati bil-mewt jew hsara fil-persuna; jew

(b) telfien, hsara, jew qirda ta' xi oġġett ta' proprjeta minbarra l-prodott difettuż innifsu, b'valur ta' mill-anqas mitejn lira, jew dak il-valur iehor hekk kif il-Ministru jista' jippreskrivi:

Iżda -

(i) l-oġġett ta' proprjetà jkun ta' tip soltu maħsub għall-użu jew il-konsum privat, u

(ii) l-oġġett ta' proprjetà kien użat mill-parti aggravata prinċipalment għall-użu jew il-konsum privat tagħha nnifisha.

X' difiża
produttur
jista' jgħib.

62. Il-produttur ma jgħorr ebda responsabbiltà taht din it-Taqsima jekk iġib prova:

(a) li huwa ma qiegħedx il-prodott fiċ-ċirkolazzjoni, jew

(b) li, fil-qies taċ-ċirkostanzi, jkun probabbli li d-difett li jkun ikkaġuna l-hsara ma kienx jeżisti fiż-żmien meta l-prodott ikun tqiegħed fiċ-ċirkolazzjoni minnu jew li dak id-difett beda jsehħ wara, jew

(ċ) li l-prodott la ġie manifatturat minnu għall-bejgħ jew għal xi xorta ta' distribuzzjoni b'ghan ekonomiku lanqas ma ġie manifatturat jew imqassam minnu filwaqt tal-kummerċ jew negozju tiegħu, jew

(d) li d-difett involut ikun dovut minhabba fit-tħaris ta' xi htieġa mandatorja imposta b'liġi jew minn xi awtorità pubblika, jew

(e) li l-istat ta' konossenza xjentifika u teknika filwaqt li huwa kien qiegħed il-prodott fiċ-ċirkolazzjoni ma kienetx daqstant li b'hekk setgħet giet skoperta l-eżistenza tad-difett, jew

(f) fil-każ ta' manifattur ta' komponent jew il-produttur ta' materja prima, li d-difett ikun attribwibbli għad-disinn tal-prodott li fih ikun twaħhal il-komponent jew giet inkorporata l-materja prima jew għall-istruzzjoni mogħtija mill-manifattur tal-prodott.

Hlas
provvizorju
ta' perit.

Kap. 12.

63. Il-Qorti tista, minkejja kull provvediment tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, tordna li d-drittijiet ta' perit għandhom provvizorjament jithallsu jew jigu depożitati mill-produttur jekk ikun hemm provi *prima facie* li l-hsara tkun giet kaġunata minn difett fil-prodott.

- Solidarjetà. 64. Meta taht din it-Taqsima, żewġ persuni jew aktar jkunu responsabbli għall-istess hsara, l-obbligazzjoni tagħhom tkun wahda solidali.
- Kontribuzzjoni għall-hsara mill-persuna aggravata. Kap. 16. 65. L-artikolu 1051 tal-Kodiċi Ċivili għandu jkun japplika sabiex tiġi stabbilita r-responsabbiltà tal-produttur meta d-dannu jkun kaġunat sew minn xi difett fil-prodott sew bi htija tal-persuna aggravata jew minn xi hadd li l-persuna aggravata tkun responsabbli għalih.
- Responsabbiltà jekk ikun hemm att jew ommissjoni ta' terzi. 66. Ir-responsabbiltà tal-produttur ma għandhiex titnaqqas meta l-hsara tkun kaġunata sew b'difett fil-prodott sew b'xi att jew ommissjoni ta' terzi.
- Limitazzjoni ta' azzjoni. 67. (1) L-azzjoni għal danni taht din it-Taqsima għandha tiġi preskritta meta jgħaddu tliet snin mill-ġurnata meta l-parti aggravata saret taf, jew imissha raġonevolment saret taf, bil-hsara, bid-difett u bl-identità tal-produttur.
- (2) Minkejja s-subartikolu (1) ta' dan l-artikolu, l-azzjoni għad-danni taht din it-Taqsima għandha f'kull każ tispiċċa mal-mogħdija tal-perjodu ta' għaxar snin mid-data meta l-produttur ikun qieghed fiċ-ċirkolazzjoni l-prodott attwali li jkun ikkaġuna l-hsara kemm-il darba l-parti aggravata ma tkunx sadattant bdiet proċedimenti legali kontra l-produttur.
- Kap. 16. (3) Is-Sub-titoli I, II u III at-*Titolu XXV* tal-Kodiċi Ċivili li jirrigwardaw il-kawżi li jimpedixxu, jissospendu u jiksru l-preskrizzjoni għandhom ikunu japplikaw għal azzjonijiet li jsiru taht din it-Taqsima.
- (4) Ikun jinkombi fuq il-produttur il-piż tal-prova dwar meta l-prodott attwali li kkaġuna d-dannu jkun tqieghed fiċ-ċirkolazzjoni.
- Projbizzjoni ta' esklużjoni ta' responsabbiltà. 68. Ir-responsabbiltà ta' produttur taht din it-Taqsima ma tistax tiġi limitata jew eskluża sew b'xi patt f'kuntratt, b'xi avviż jew b'kull mod iehor li jista' jkun.
- Drittijiet oħra ta' azzjoni mhumiex prekluzi. Kap. 16. 69. Il-provvediment taht din it-Taqsima ma għandhomx jeskludu jew jillimitaw xi drittijiet jew rimedji li l-persuna aggravata jkollha taht il-Kodiċi Ċivili jew xi ligi oħra.

Danni
emergenti
minn
aċċidenti
nukleari.

70. Il-provvedimenti taht din it-Taqsima ma ghandhomx japplikaw ghal xi feriment jew hsara li jiġġarbu minn aċċidenti nukleari li jkunu regolati b'xi ftehim internazzjonali li Malta tkun imsieħba fih.

Kif tapplika
din it-
Taqsima.

71. Din it-Taqsima ghandha tapplika ghal prodotti li jitqeghdu fiċ-ċirkolazzjoni f'Malta wara l-bidu fis-seħh ta' din it-Taqsima.

TAQSIMA VIII

BEJGH TA' OĠĠETTI LIL KONSUMATURI

Tifsir.

72. (1) F'din it-Taqsima kemm-il darba r-rabta tal-kliem ma tehtiegħ xort'ohra:

“bla ebda hlas” tirreferi għall-esklużjoni ta' l-ispejjeż li jsiru biex iġibu l-oġġetti konformi mal-kuntratt ta' bejgħ, partikolarment man-nefqa tal-pustagġ, xogħol u materjal, liema spejjeż għandhom skond hekk jithallsu mill-kummerċjant;

“garanti” tfisser min ikun responsabbli lejn il-konsumatur għall-eżekuzzjoni ta' garanzija kummerċjali u tinkludi lil kull persuna ohra li tkun qed taġixxi għall-garanti jew f'ismu;

“garanzija kummerċjali” tfisser kull rappreżentazzjoni jew rabta tkun kif tkun deskritta jew mogħtija minn kummerċjant jew produttur lil konsumatur, irrispettivament minn jekk din tingħatax b'xi hlas iktar jew mingħajru, li jintradd lura l-prezz imhallas jew li jiġu rimpjazzati, imsewwija jew ittrattati oġġetti b'kull mod li jkun, jekk dawn ma jkunux skond l-ispeċifikazzjonijiet stipulati fid-dikjarazzjoni ta' garanzija jew fir-reklamar rilevanti;

“oġġetti” tfisser kull biċċa proprjetà mobbli li tkun tangibbli;

“produttur” tfisser il-manifattur ta' oġġetti magħmula għall-konsumatur, l-importatur ta' oġġetti magħmula għall-konsumatur ġewwa Malta jew ġo xi pajjiż iehor jew grupp ta' pajjiżi ohra kif jistgħu, minn żmien għal żmien, jissemmew għal dan l-ghan mill-Ministru b'avviż fil-Gazzetta, jew minn kull min jagħmilha ta' produttur billi jqiegħed ismu, *t-trade mark* jew sinjal distintiv iehor tiegħu fuq l-oġġetti;

“tiswija” tfisser fil-każ ta’ nuqqas ta’ konformità, il-proċess li bih oġġetti jingiebu konformi mal-kuntratt ta’ bejgh.

(2) Kuntratti għall-provvista ta’ oġġetti magħmula għall-konsumatur li għad iridu jiġu manifatturati jew prodotti għandhom ukoll jitqiesu bħala kuntratti ta’ bejgh għall-għanijiet ta’ din it-Taqsima.

(3) Id-dispożizzjonijiet ta’ din it-Taqsima għandhom ikunu japplikaw għal kuntratti ta’ bejgh ta’ oġġetti lil konsumaturi magħmula jew esegwiti wara l-bidu fis-sehh ta’ din it-Taqsima.

Konformità
mal-kuntratt.

73. (1) Il-kummerċjanti għandhom l-obbligu jikkunsinnaw lill-konsumaturi oġġetti li jkunu konformi mad-deskrizzjoni u l-ispeċifikazzjonijiet fil-kuntratt tal-bejgh, u skond hekk ikollhom l-obbligu li jiżguraw li l-oġġetti:

(a) jkunu konformi mad-deskrizzjoni mogħtija mill-kummerċjant u jkollhom il-karatteristiċi, l-fattizzi u l-kwalitajiet ta’ l-oġġetti li l-kummerċjant jkun wiegħed jew ikun wera jew xort’ohra pprezenta lill-konsumatur bħala kampjun jew mudell;

(b) jkunu adattati għall-iskop partikolari li għalih il-konsumatur ikun jehtieghom u li jkun għarraf bihom lill-kummerċjant meta kien qed jagħmel il-kuntratt;

(c) jkunu adattati għall-iskop li għalih oġġetti ta’ l-istess tip normalment jintużaw; u

(d) juru l-kwalità u l-kapaċità li huma normali f’oġġetti ta’ l-istess tip u li l-konsumatur jista’ raġonevolment jistenna, fil-qies tax-xorta ta’ l-oġġetti u meta jitqiesu d-dikjarazzjonijiet pubbliċi dwar il-karatteristiċi speċifiċi ta’ l-oġġetti li jsiru dwarhom sew mill-kummerċjant, mill-produttur jew mir-rappreżentant tiegħu, partikolarment fl-irreklamar jew fuq it-tikketti.

(2) L-obbligazzjoni tal-kummerċjant taht is-subartikolu (1) ta’ dan l-artikolu meta jkun sar il-kuntratt, għandha tiskadi u tintemm f’ dawn iċ-ċirkostanzi li ġejjin:

(a) meta l-konsumatur kien jaf, jew ma setax raġonevolment ma jkunx jaf, bin-nuqqas ta’ konformità, jew

(b) meta n-nuqqas ta' konformità jkollha l-origni tagħha f' materjal fornit mill-konsumatur.

(3) Il-kummerċjant ikun marbut b'dikjarazzjonijiet pubbliċi msemmija fil-paragrafu (d) tas-subartikolu (1) ta' dan l-artikolu kemm-il darba huwa:

(a) ma jurix li ma kienx jaf, u li ma setax raġonevolment ikun jaf, bid-dikjarazzjoni involuta, jew

(b) ma jurix li saż-żmien meta jkun sar il-kuntratt id-dikjarazzjoni tkun giet korretta, jew

(ċ) ma jurix li d-deċizjoni li jinxtraw l-oġġetti ma setgħetx kienet influwenzata bid-dikjarazzjoni.

(4) Kull nuqqas ta' konformità li tirriżulta mill-istallazzjoni mhux tajba ta' l-oġġetti għandha titqies daqslikieku kient nuqqas ta' konformità ta' l-oġġetti jekk l-istallazzjoni tkun parti mill-kuntratt tal-bejgħ ta' l-oġġetti u l-oġġetti kienu installati mill-kummerċjant jew taht ir-responsabbiltà tiegħu. Dan għandu japplika wkoll jekk il-prodott, li jkun maħsub li jiġi installat mill-konsumatur, jiġi installat mill-konsumatur u l-installazzjoni mhux korretta tkun dovuta għal xi difett fl-istruzzjonijiet dwar l-istallazzjoni.

X'rimedji
għandu l-
konsumatur.

74. (1) Il-kummerċjant ikun responsabbli li jipprovdi rimedju skond dan l-artikolu lill-konsumatur għal kull nuqqas ta' konformità fl-oġġetti li kienet teżisti meta l-oġġetti ġew ikkunsinnati mill-kummerċjant lill-konsumatur. Bla ħsara għall-provvedimenti l-oħra ta' din it-Taqsima, għandu jkun il-konsumatur li jiddeċiedi x'rimedju għandu jitlob.

(2) Fil-każ ta' tali nuqqas ta' konformità, il-konsumatur ikollu jedd jew -

(a) li l-oġġetti jingiebu konformi bla ebda hlas billi jissewwew jew jiġu rimpjazzati, skond is-subartikolu (1) ta' l-artikolu 75, jew

(b) li jirċievi hlas lura ta' tnaqqis fil-prezz adattat jew li ssir ir-rexxissjoni tal-kuntratt għar-rigward ta' dawk l-oġġetti, skond is-subartikoli (1) jew (2) ta' l-artikolu 76.

Tiswija jew
rimpjazzament
ta' l-oġġetti.

75. (1) Sakemm ma jkunx impossibbli jew sproporzjonat, il-konsumatur jista', fl-ewwel lok, jehtieg lill-kummerċjant isewwi l-oġġetti jew inkella jirrimpjazzjhom, f'kull każ bla ebda hlas.

(2) Rimedju jitqies li jkun sproporzjonat jekk ikun jimponi spejjeż fuq il-kummerċjant li, b'paragun mar-rimedji alternattivi li jeżistu taht din it-Taqsima, ma jkunux raġonevoli, meta jitqiesu:

(a) il-valur ta' l-oġġetti li kieku ma kienx hemm nuqqas ta' konformità,

(b) xi jkun ifisser dak in-nuqqas ta' konformità, u

(c) jekk ir-rimedju alternattiv ikunx jista' jitlesta għalkollox minghajr ebda inkonvenjenza sinjifikanti għall-konsumatur.

(3) Kull tiswija jew rimpjazzament għandhom jitlestew, kemm ikun prattikament malajr, fi żmien raġonevoli u minghajr ebda inkonvenjenza sinjifikanti għall-konsumatur, meta titqies ix-xorta ta' l-oġġetti u l-iskop li għalih il-konsumatur jkun htiieg daww l-oġġetti.

Tnaqqis tal-prezz mar-rexxissjoni tal-kuntratt.

76. (1) Il-konsumatur jista' jehtieg riduzzjoni adattata fil-prezz jew li ssir ir-rexxissjoni tal-kuntratt:

(a) meta l-konsumatur ma jkun jista' jikseb la r-rimedju ta' tiswija lanqas dak ta' rimpjazzar, jew

(b) jekk il-kummerċjant ma jkunx spiċċa r-rimedju ta' tiswija jew ta' rimpjazzar fi żmien raġonevoli, jew

(c) jekk il-kummerċjant jkun jista' biss jipprovdi jew jispiċċa r-rimedju ta' tiswija jew rimpjazzar b'inkonvenjenza sinjifikanti għall-konsumatur.

(2) Il-konsumatur ma jkollux jedd għar-rexxissjoni tal-kuntratt jekk in-nuqqas ta' konformità miegħu jkun wiehed minuri u insinjifikanti.

Dritt għal rimedju li għandu l-aħhar bejjiegħ.

77. Meta l-kummerċjant bhala l-aħhar bejjiegħ ta' l-oġġetti jkun responsabbli lejn il-konsumatur minhabba f'nuqqas ta' konformità li tirriżulta minn xi att jew ommissjoni tal-produttur, tal-bejjiegħ ta' qabel fl-istess rabta ta' kuntratti jew ta' kull intermedjarju iehor, l-aħhar bejjiegħ ikollu jedd li jikseb ir-rimedji kontra l-persuna jew persuni responsabbli fir-rabta kontrattwali.

Preskrizzjoni. 78. Il-kummerċjant ghandu jkun responsabbli taht il-provvedimenti ta' l-artikoli 73 u 74 meta l-konsumatur jinduna bin-nuqqas ta' konformità fi żmien sentejn mill-kunsinna ta' l-oġġetti. Dan il-perjodu ta' preskrizzjoni ghandu jiġi sospiż sakemm idumu ghaddejin in-negozjati bejn il-kummerċjant u l-konsumatur bil-ghan li jintlahaq ftehim amikevoli.

Avviż li jinghata lill-kummerċjant. 79. (1) Sabiex ikun jista' jikseb benefiċċju mir-rimedji disponibbli taht din it-Taqsima, konsumatur ghandu javża lill-kummerċjant bil-miktub b'kull nuqqas ta' konformità fi żmien xahrejn mid-data meta l-konsumatur ikun intebah b'dak n-nuqqas ta' konformità.

(2) Għall-ghanijiet ta' dan l-artikolu, ghandu jitqies bhala prova suffiċjenti li jkun inghata avviż jekk in-notifika ssir b'att ġudizzjarju fiż-żmien preskritt, jew jekk il-konsumatur juri li l-ittra tkun intbaghtet bil-posta registrata fiż-żmien preskritt.

Preżunzjoni li jkun hemm nuqqas ta' konformità. 80. Sakemm ma jiġix ippruvat xort'ohra, kull nuqqas ta' konformità li wiehed jista' jinduna bih fi żmien sitt xhur mill-kunsinna ta' l-oġġetti ghandu jitqies bhala li jkun eżista filwaqt tal-kunsinna, meta din il-presunzjoni tkun fil-biċċa l-kbira kompatibbli max-xorta ta' l-oġġetti jew max-xorta ta' nuqqas ta' konformità.

Ma jorbtux dawk il-klawżoli fil-kuntratt li jwarrbu jew jirrestringu xi drittijiet. 81. Ebda klawżola kuntrattwali jew ftehim magħmul mill-konsumatur mal-kummerċjant qabel ma n-nuqqas ta' konformità jiġi mgħarraf lill-kummerċjant ma jkunu jorbtu lill-konsumatur jekk dawk il-klawżoli jew ftehim b'mod sew dirett sew mhux dirett ikunu jwarrbu jew jirrestringu d-drittijiet disponibbli taht din it-Taqsima.

Il-garanzija kummerċjali ghandha tkun iktar vantaġġuza. 82. Garanzija kummerċjali hija garanzija addizzjonali li tqieghed lill-benefiċjarju ta' dik il-garanzija f'pożizzjoni iktar vantaġġuza min dik stabbilita bil-liġi. Garanzija kummerċjali ma għandhiex tkun tolqot hażin rimedji ohra li jkunu disponibbli taht kull liġi ohra li tkun tirregola r-responsabbiltà li tohrog minn kuntratt jew delitt.

Htiġiet għal garanziji kummerċjali. 83. (1) Garanzija kummerċjali ghandha tiġi abbozzata f'forma bil-miktub b'mod ċar u legibbli, f'lingwaġġ li jiftiehem u għandha tkun konformi ma' dan li ġej:

(a) li tkun formulata f'mill-inqas waħda mil-lingwi uffiċjali ta'Malta;

(b) li tkun taghti l-isem u l-indirizz tal-garanti, u tkun tiddikjara biċ-ċar x'ikun l-indirizz permanenti tal-post tal-kummerċ jew tan-negozju u isem il-persuna li tkun qeghda tipprovdi lill-konsumatur bil-garanzija kummerċjali;

(ċ) li tkun tiddikjara biċ-ċar x'ikun il-kontenut tal-garanzija inkluża l-firxa territorjali taghha jekk din tkun wahda limitata kif ukoll iż-żmien li matulu din il-garanzija tibqa' valida mid-data tax-xiri u jistghu jiġu stipulati perjodi differenti ghal komponenti differenti ta' l-oġġetti;

(d) li tkun tispeċifika b'mod ċar il-mod kif konsumatur ghandu jipproċedi biex jaghmel talba u jikseb l-esekuzzjoni tal-garanzija kummerċjali, il-persuna li tkun awtorizzata tesegwixxi l-garanzija kummerċjali u indirizz f'Malta fejn jistghu jintbaghtu t-talbiet. Jekk persuna li tkun qed tipprovdi garanzija kummerċjali tonqos milli tipprovdi lill-konsumatur bl-informazzjoni mehtieġa taht dan il-paragrafu, hija mbaghad tkun responsabbli ghall-esekuzzjoni tal-garanzija kummerċjali bi spejjeż taghha;

(e) li tkun tiddikjara b'mod ċar jekk il-garanzija kummerċjali tkunx tista' tiġi trasferita lil oħrajn. Kemm-il darba ma jiġix stipulat xort'oħra l-garanzija kummerċjali tista' wkoll tkun disponibbli ghal sidien sussegwenti ta' dawk l-oġġetti li l-garanzija kummerċjali tkun tirreferi ghalihom:

Iżda kemm-il darba l-garanzija kummerċjali ma tiddikjarax speċifikament xort'oħra, ghandu jiftiehem li fil-każ ta' oġġetti, il-garanzija kummerċjali tkun tkopri kull difett li jista' jirriżulta matul il-perjodu ta' garanzija;

(f) li tipprovdi deskrizzjoni ċara ta' l-oġġetti jew is-servizzi koperti mill-garanzija kummerċjali;

(g) li tistipula b'mod ċar dak li l-garanti jkun qed jintrabat li jaghmel jekk ikun hemm difett fl-oġġetti koperti bil-garanzija kummerċjali jew jekk is-servizzi koperti mill-garanzija ma jitwettqux kif dovut; u

(h) li tiddikjara b'mod ċar li l-konsumatur ikun igawdi ċerti drittijiet li taghtih il-ligi għar-rigward tal-bejgħ ta' oġġetti lil konsumaturi u li dawk id-drittijiet ma jintlaqtux hażin mill-garanzija.

(2) Fuq talba tal-konsumatur, il-kummerċjant ghandu jagħmel disponibbli lill-konsumatur il-garanzija kummerċjali bil-miktub jew b'xi mezz iehor li ma jithassarx li jkun aċċessibbli u disponibbli għall-konsumatur.

(3) Meta garanzija kummerċjali ma tkunx thares il-htigiet stipulati f'dan l-artikolu, il-validità tal-garanzija ma għandhiex tintlaqat u l-konsumatur ghandu jibqa' jkollu l-jedd li jagħmel kull talba bis-saħħa tagħha u jesigi li tiġi onorata.

Responsabbiltà taht garanzija kummerċjali. 84. Meta kummerċjant jew xi hadd iehor jagħti garanzija kummerċjali lil konsumatur, irrispettivament meta jew kif din tingħata, għaldaqshekk dak il-kummerċjant jew xi hadd iehor ikun responsabbli lejn il-konsumatur għall-osservanza tal-pattijiet u l-eżekuzzjoni tal-garanzija kummerċjali bhallikieku kien il-garanti, kemm-il darba il-kummerċjant jew xi hadd iehor, skond il-każ, ma jgibx prova li huwa kien b'mod espress u ċar gharraf lill-konsumatur xort'ohra filwaqt tal-kunsinna ta' l-oġġetti jew it-twertiq tas-servizz.

Garanzija kummerċjali ma għandhiex teskludi drittijiet taht liġijiet ohra. 85. (1) Garanzija kummerċjali u kull dritt mogħti lil konsumatur taht il-garanzija ma għandhom b'ebda mod, sew dirett sew indirett, jeskludu jew jillimitaw id-drittijiet ta' konsumatur taht dan l-Att jew taht kull ligi ohra. Kull esklużjoni jew limitazzjoni simili li jiġu stipulati bi ksur ta' din il-projbizzjoni għandhom ikunu nulli u ineffettivi.

(2) Il-provvedimenti f'din it-Taqsima għandhom ikunu japplikaw fil-każijiet kollha meta l-kuntratt għall-bejgh ta' oġġetti lil konsumatur jkun sar f'Malta jew xort'ohra jkollu rabta fil-qrib ma' Malta, jew dawk il-pajjiżi jew grupp ta' pajjiżi ohra hekk kif il-Ministru jista' minn żmien għal żmien jistabbilixxi bil-ghan ta' dan il-provvediment b'avviż pubblikat fil-Gazzetta. Skond dan, id-drittijiet li jitnisslu favur il-konsumaturi taht din it-Taqsima għandhom jibqgħu japplikaw u ma għandhomx jintlaqtu mill-adozzjoni tal-ligi ta' xi pajjiż li ma jkunx jinkwadra taht il-provvedimenti ta' din it-Taqsima.

Il-garanti jista' biss jitlob dawk il-hlasijiet stipulati. 86. Garanti ma jistax, meta jkun qed iwettaq jew jesegwixxi garanzija kummerċjali, jitlob lil xi konsumatur biex ihallsu xi dritt jew hlas, ikun kif ikun magħruf, kemm-il darba dan ma jkunx gie stipulat b'mod espress u ċar fil-garanzija kummerċjali.

Spejjeż tal-garr. 87. Il-garanti għandu jiehu fuqu l-ispiza ta' kull garr li jrid isir f'dak li għandu x'jaqsam mat-twettiq ta' garanzija kummerċjali kemm-il darba ma jiġix stipulat xort'ohra fil-garanzija kummerċjali.

Estensjoni ta' garanzija kummerċjali. 88. It-tul ta' żmien ta' garanzija kummerċjali għandu jittawwal awtomatikament għal żmien daqsinsew dak li matulu l-garanti kellu l-oġġetti jew parti mill-oġġetti fil-pussess tiegħu sabiex iwettaq jew jesegwixxi l-garanzija kummerċjali jew bhala riżultat tar-rikjam ta' l-oġġetti jew parti minnhom mill-manifattur.

Garanzija minn terzi. 89. It-tismija mill-garanti ta' terzi biex jesegwixxu garanzija kummerċjali ma tehlisx lill-garanti mill-obbligazzjoni li jkollu lejn il-konsumatur skond il-garanzija kummerċjali mogħtija lill-konsumatur.

Garanzija kummerċjali dikjarata fir-reklam. 90. Garanzija kummerċjali sew dwar oġġetti sew dwar servizzi li tissemma f'dikjarazzjoni jew riklam minn xi persuna għandha tkun torbot lil dik il-persuna ukoll jekk dik il-garanzija kummerċjali ma tkunx speċifikatament imsemmija fil-kuntratt tal-bejgħ.

Jedd ta' azzjoni taht garanzija kummerċjali. 91. (1) Mingħajr preġudizzju għal kull rimedju iehor li tagħti l-liġi, konsumatur jista' jibda proċedimenti ċivili kontra garanti li jonqos milli josserva xi wiehed mill-pattijiet jew rabtiet stipulati f'garanzija kummerċjali.

(2) Il-Qorti tista' fi proċedimenti ċivili li jsiru taht din it-Taqsima -

(a) tordna lill-garanti li jiehu dik l-azzjoni rimedjali li tista' tkun meħtieġa biex josserva il-pattijiet tal-garanzija, jew

(b) tordna lill-garanti li jwettaq l-obbligazzjonijiet tiegħu taht il-garanzija kummerċjali b'sodisfazzjon tagħha f'dak iż-żmien li l-Qorti tista' tistabbilixxi. Meta tkun qed tagħmel dan il-Qorti tista' tordna lill-garanti jhallas lill-konsumatur ammont li ma jkunx ta' iktar minn hamsin lira Maltija għal kull ġurnata ta' nuqqas fil-każ ta' non-osservanza wara l-iskadenza tal-perjodu stabbilit mill-Qorti.

Provvedimenti jipprevalixxu fuq liġijiet ohra. 92. Il-provvedimenti ta' din it-Taqsima, meta dawn ikunu iktar jaqblu għall-konsumatur, għandhom jipprevalixxu fuq il-provvedimenti ta' kull liġi ohra.

Rimpjazzar ta' *parts*, servizz ta' tiswija meta l-oġġetti jehtiegu manutenzjoni.

93. (1) Jekk l-oġġetti li jkunu s-sugġett ta' kuntratt ta' bejgh lil konsumatur, ikunu ta' xorta li tista' tehtieg manutenzjoni, jew possibilment ir-rimpjazzar ta' *parts*, għaldaqshekk sew il-*parts* għar-rimpjazzar sew is-servizz ta' tiswija adattat għandhom ikunu disponibbli għal żmien raġonevoli mid-data tal-kunsinna ta' l-oġġetti mill-kummerċjant lill-konsumatur.

(2) Il-kummerċjant jew il-produttur jista' jirrilaxxa lill-konsumatur minn din l-obbligazzjoni billi jwissi b'mod speċifiku u espress lill-konsumatur bil-miktub, qabel ma jsir il-kuntratt, li huwa ma jkunx jipprovdi l-*parts* għar-rimpjazzar jew is-servizz ta' tiswija.

TAQSIMA IX

ORDNIJET TA' THARIS

Hruġ ta' Ordnijiet ta' Tharis.

94. (1) Meta jkun hekk jahseb li jkun raġonevolment adattat jew mehtieg fl-interess pubbliku, id-Direttur jista', sew b'inizjattiva tiegħu nnifsu jew wara li ssirlu talba bil-miktub minn korp kwalifikanti, johroġ ordni ta' tharis -

(a) lil xi persuna fejn jehtieg -

(i) it-thassir jew it-tibdil ta' pattijiet f'kuntratt li jsir mal-konsumatur li d-Direttur ikun iqis li ma jkunx wiehed ġust għall-konsumaturi skond il-provvedimenti tat-Taqsima VI ta' dan l-Att; u

(ii) l-inkorporazzjoni ta' pattijiet f'kuntratt li jsir mal-konsumatur li d-Direttur ikun iqis li jkunu mehtieġa għall-aħjar tagħrif tal-konsumaturi, jew sabiex jipprevjeni żbilanċ konsiderevoli bejn l-obbligazzjonijiet u d-drittijiet tal-partijiet, u dan għall-benefiċċju tal-konsumaturi;

(b) fejn jehtieg lil xi persuna involuta, li tkun tippromwovi jew tiġġestixxi, jew tippromwovi li tinvolvi ruhha jew tiġġestixxi jew tippromwovi xi reklamar li jkun qarrieqi jew mhux reklamar komparattiv permess skond it-Taqsima VI ta' dan l-Att, biex ma tkomplix għaddeja jew tieqaf minn dak ir-reklamar;

(ċ) fejn jehtieg lil xi persuna li tiehu dawk il-mizuri speċifikati fl-ordni ta' tharis, fiż-żmien speċifikat fl-ordni ta' tharis sabiex jiġi żgurat li dan l-Att jew

regolamenti magħmulin tahtu jew kull liġi oħra li tittratta dwar id-drittijiet u l-protezzjoni tal-konsumatur li tista' tiġi hekk imsemmija b'Ordni fil-Gazzetta mill-Ministru wara li jikkonsulta lill-Kunsill, jiġu mharsa; u

(d) fejn jehtieg lil xi persuna li tiegħaf jew tiddeżisti milli twettaq xi reat kontra dan l-Att jew regolamenti magħmulin tahtu jew kull liġi oħra li tittratta dwar id-drittijiet u l-protezzjoni tal-konsumatur li tista' tiġi hekk imsemmija b'Ordni fil-Gazzetta mill-Ministru wara li jikkonsulta lill-Kunsill.

(2) Id-Direttur għandu, meta jkun qed johroġ ordni ta' tharis taht dan l-artikolu,

(a) jinnotifika kopja ta' l-ordni ta' tharis lil kull persuna li l-ordni tkun inharget kontriha;

(b) jinkludi flimkien ma' l-ordni ta' tharis, informazzjoni rigward id-dritt li tinbeda kawża quddiem il-Qorti skond l-artikolu 97; u

(c) jiddikjara fil-qosor ir-raġunijiet tiegħu għall-hruġ ta' dik l-ordni ta' tharis, liema raġunijiet għandhom jiġu notifikati lil kull persuna li kontriha tinhareġ l-ordni ta' tharis u, jekk ikun hemm, lill-korp kwalifikanti li fuq applikazzjoni tiegħu tinhareġ l-ordni ta' tharis.

(3) Ebda mandat kawtelatorju jew xi ordni iehor taht xi liġi oħra ma għandhom jinħarġu minn xi qorti jew tribunal li jkun iżomm jew jirrestringi lid-Direttur milli johroġ ordni ta' tharis taht dan l-Att.

(4) Korp kwalifikanti, meta dan ikun qed jagħmel applikazzjoni taht din it-Taqsima, ma jkunx mehtieg li jkollu jew li jgħib prova dwar xi interess fi, jew jintlaqat mill-kwistjoni jew azzjoni involuta.

Diskrezzjoni tad-Direttur fil-hruġ ta' ordni ta' tharis.

95. (1) Ikun fid-diskrezzjoni tad-Direttur dwar jekk johroġ ordni ta' tharis jew le wara li tkun saritlu talba bil-miktub minn korp kwalifikanti skond l-artikolu 94.

(2) Jekk id-Direttur jiddeċiedi li ma għandux johroġ ordni ta' tharis wara li tkun saritlu applikazzjoni minn korp kwalifikanti, huwa għandu, fi żmien sebat ijiem mid-data tad-deċiżjoni tiegħu, javża bil-miktub lill-korp kwalifikanti u lill-persuni li kontrihom ikun qed jintalab l-

ordni ta' tharis bid-deċiżjoni tiegħu filwaqt li jiddikjara r-raġunijiet tiegħu għaldaqstant.

(3) Korp kwalifikanti jista' fi żmien hmistax il-ġurnata minn meta jiġi notifikat bid-deċiżjoni tad-Direttur li ma johrogx ordni ta' tharis, jibda kawża quddiem il-Qorti tal-Maġistrati fil-ġurisdiżżjoni ċivili tagħha għall-hruġ ta' ordni li tkun tehtieg lid-Direttur li johroġ ordni ta' tharis taht l-artikolu 94. Dawk il-persuni li kontrihom tkun qed tintalab li ssir ordni ta' tharis għandhom ikunu partijiet fil-kawża, u jkun id-dmir tal-korp kwalifikanti li jinnotifika lil dawk il-persuni skond hekk.

(4) Fit-twettiq tal-funzjonijiet u setgħat tiegħu taht din it-Taqsima d-Direttur għandu f'kull każ jaġixxi b'mod kemm jista' jkun spedittiv. Fil-każ ta' applikazzjoni minn korp kwalifikanti, id-Direttur għandu jagħti d-deċiżjoni tiegħu fi żmien hmistax il-ġurnata minn meta jkun irċieva l-applikazzjoni.

Ordni ta' tharis għandu jkollha sehh immedjat.

96. Ordni ta' tharis għandha tibda ssehh b'effett immedjat.

Applikazzjoni għal revoka ta' ordni ta' tharis.

97. (1) Persuna li kontriha tkun saret ordni ta' tharis tista', fi żmien hmistax-il-ġurnata minn meta jiġi notifikat bl-ordni ta' tharis, tibda kawża quddiem il-Qorti tal-Maġistrati fil-ġurisdiżżjoni ċivili tagħhom għal revoka ta' l-ordni ta' tharis. Kawża bħal dik tista' ssir biss għal dawn ir-raġunijiet li ġejjin:

(a) fuq xi punt ta' liġi materjali; jew

(b) jekk l-għemil ta' ordni ta' tharis ikun gravement irragonevoli jew mhux ġustifikat.

(2) Il-Qorti tista' tikkonferma, tibdel jew tħassar l-ordni ta' tharis b'kull patt jew kondizzjoni li tqis xieraq.

(3) Meta kawża tinbeda taht is-subartikolu (1) ta' dan l-artikolu, l-ordni ta' tharis għandha titwaqqaf sakemm ikun magħruf kif spicċat il-kawża. Id-Direttur jista' madankollu, jekk huwa jqis li jkun adattat jew mehtieg fl-interess pubbliku, jitlob lil Qorti li tagħmel ordni, hawnhekk iżjed 'il quddiem imsejha ordni temporanja ta' tharis, li tkun tordna li l-ordni ta' tharis tista' bla hsara għal dawk il-modifiki li l-Qorti tista' fl-ordni temporanja ta' tharis tistabilixxi,

tkompli fis-sehh sakemm il-kawża mibdija skond is-subartikolu (1) ta' dan l-artikolu tigi finalment deciza. Ordni temporanja ta' tharis ghandha tiskadi malli l-kawża tigi finalment deciza.

(4) Persuna li kontriha tkun inharget ordni ta' tharis tista' ma tibdiex kawża quddiem il-Qorti skond dan is-subartikolu jekk hija tkun qabel iddahhlet fil-kawża skond l-artikolu 95.

Il-kawzi
jinstemghu u
jigu decizi
b'urgenza.

98. Dawk il-kawzi li jsiru taht l-artikoli 95 u 97 ghandhom jinstemghu u jigu decizi mill-Qorti bl-urgenza u bl-iktar mod spedittiv possibbli.

Ebda htiega
li jigi
ppruvat it-
telfien
attwali.

99. Id-Direttur, meta jkun qed johrog ordni ta' tharis taht l-artikolu 94, ma jkunx mehtieg li jgib prova dwar:

(a) it-telfien jew il-hsara attwali, jew

(b) it-traskuragni, negligenza jew htija daparti tal-persuna li kontriha ssir l-ordni.

Id-Direttur
jipprova
jikseb
konformita
volontarja.

100. Id-Direttur ghandu, kull meta jqis li jkun possibbli u ragonevoli li hekk jaghmel, jipprova l-ewwel jikseb konformita volontarja mill-persuna jew il-persuni involuti, ma' dan l-Att jew ma' regolamenti maghmulin tahtu jew ma' kull ligi ohra li tkun tittratta mad-drittijiet u l-protezzjoni tal-konsumatur hekk kif jista' jigi stabbilit mill-Ministru wara li jikkonsulta lill-Kunsill b'Ordni fil-Gazzetta, qabel ma jghaddi ghall-hrug ta' ordni ta' tharis taht l-artikolu 94.

Id-Direttur
jista' jehrieg
il-pubblikaz-
zjoni.

101. Id-Direttur, sabiex jelimina jew inaqqas l-effetti kontinwi ta' non-konformita ma' xi provvedimenti ta' dan l-Att jew ma' regolamenti maghmulin tahtu jew ma' kull ligi ohra li tittratta dwar id-drittijiet u l-protezzjoni tal-konsumatur hekk kif jista' jigi msemmi mill-Ministru wara li jikkonsulta lill-Kunsill b'Ordni fil-Gazzetta, jista' b'avviz bil-miktub jitlob lil xi persuna:

(a) li tippubblika kopja ta' l-ordni ta' tharis maghmula taht l-artikolu 94 kontra persuna tali, kollha kemm hi jew f'parti minnha u f'dik l-ghamla li jqis li jkun adattat u adegwat; u

(b) li tippubblika dikjarazzjoni korrettiya ghar-rigward ta' kull ksur ta' dan l-Att, kontra regolamenti maghmulin tahtu, jew kontra kull ligi ohra li tittratta dwar

id-drittijiet u l-protezzjoni tal-konsumatur hekk kif jista' jiġi msemmi mill-Ministru wara li jikkonsulta lill-Kunsill b'Ordni fil-Gazzetta;

Il-pubblikazzjoni tista' ssir f'mill-inqas żewġ gazzetti ta' kuljum fi żmien sebat ijiem minn meta l-persuna tirċievi l-avviż u din ghandha ssir bi spejjeż tal-persuna li tkun giet notifikata b'dak l-avviż. Meta dik il-pubblikazzjoni ma ssirx kif hawn aktar qabel imsemmi, id-Direttur jista' jgħaddi biex jagħmel dik il-pubblikazzjoni huwa nnifsu, f'liema każ ikollu d-dritt li jirkupra minghand il-persuna li jkun lilha gie notifikat l-avviż, kull spejjeż magħmula, bhala dejn ċivili.

TAQSIMA X

INFURZAR

Produzzjoni ta' awtorizzazzjoni bil-miktub.

102. Id-Direttur jista' jawtorizza bil-miktub lil uffiċjal pubbliku li jwettaq xi wahda mill-funzjonijiet tiegħu jew li jeżerċita xi setgħa lilu mogħtija taht din it-Taqsima. Kull uffiċjal tali għandu, meta jkun hekk meħtieġ li jagħmel, jipproduċi l-awtorizzazzjoni bil-miktub iffirmata mid-Direttur.

Dhul bi skop ta' spezzjon.

103. (1) Bil-għan li jkun jista' jwettaq il-funzjonijiet tiegħu taht dan l-Att, id-Direttur jista':

(a) jidhol u jfittex f'kull fond minbarra xi fond użat esklużivament bhala post ta' residenza;

(b) jagħmel kull spezzjon, imexxi kull *test* u wara li jhallas jew jagħmel sejha għal offerti, jiehu oġġetti; u

(ċ) jiehu kull ktieb, dokument jew *record* ikun kif ikun li jinżamm jew jinħażen.

Ebda dhul u tfittxija ma għandha ssir bejn is-sebgha ta' filgħaxija u s-sebgha ta' filgħodu, kemm-il darba d-Direttur ma jkollux għaliex jahseb li xi dewmien jista' johloq it-telf ta' xi informazzjoni meħtieġa.

(2) Meta d-Direttur jiehu xi ktieb, dokument jew *record* taht dan l-artikolu, huwa jista' jżomm dak il-ktieb, dokument jew *record* -

(a) ghal daqskemm ikun mehtieg sabiex dan ikun jistqa' jigi spezzjonat u jsiru jew jittiehdu kopji ta' estratti minnu, jew

(b) jekk dan ikun mehtieg biex jingieb bi prova fi procedimenti ghal reat taht dan l-Att jew regolamenti maghmulin tahtu.

(3) Id-Direttur ghandu jaghti lill-persuna li minghandha tkun ittiehdet xi haġa, riċevuta ghal dak li jkun ittiehed.

(4) Jekk id-Direttur izomm l-original ta' xi ktieb, dokument jew *record*, huwa ghandu jippermetti lil sidu li jkollu aċċess raġonevoli ghalih jew ghal kopja tiegħu kemm jista' jkun malajr.

Kap.9. (5) Ebda haġa f'din it-Taqsima ma ghandha titqies li tnaqqas mis-setgħat tal-Pulizija taht il-Kodiċi Kriminali jew taht xi liġi ohra.

(6) Fil-kors ta' kull dhul u tfittxija taht din it-Taqsima, id-Direttur jista' jitlob l-ghajjnuna tal-Pulizija.

Ksib ta' informazzjoni.

104. (1) Id-Direttur jista', bil-ghan li jwettaq il-funzjonijiet tiegħu taht dan l-Att, jehtieg lil kull persuna sabiex tipprovdi informazzjoni b'kull mod, inkluż:

(a) billi twieġeb ghal kull mistoqsija sew bil-fomm sew bil-miktub; jew

(b) billi tipproduci kull ktieb, dokument jew *record* iehor hekk kif id-Direttur jista' jqis li jkun mehtieg.

(2) Persuna ma ghandhiex tenhtieg twieġeb ghal xi mistoqsija jekk ir-risposta tista' tinkriminaha.

Tfixkil tad-Direttur.

105. Kull min:

(a) xjentement ifixkel, ihebb ghal, jhedded, jirreżisti jew jindahal lid-Direttur jew lil xi ufficjal pubbliku fl-eżerċizzju ta' dmirijietu taht din it-Taqsima, jew jittanta jagħmel dan; jew

(b) juza lingwagg ta' theddid, abbużiv`jew insolenti mad-Direttur jew ma' ufficjal pubbliku filwaqt li jkun qed iwettaq dmirijietu taht din it-Taqsima,

ghandu, meta jinsab hati, jkun hati ta' reat taht dan l-Att.

- Reati. 106. (1) Kull min:
- (a) jonqos li jhares xi ordni ta' tharis mahruġa taht dan l-Att jew regolamenti maghmulin tahtu;
 - (b) jirrifjuta jew jonqos milli jaghti dik l-informazzjoni kif mehtieg taht din it-Taqsima jew inkella jipprovdi informazzjoni falza jew qarrieqa,
- ikun hati ta' reat kontra dan l-Att.
- (2) Persuna li tkun hatja ta' reat taht dan l-Att jew xi regolament maghmul tahtu ghandha, kemm-il darba ma tigix preskritta piena ohra ghaliha, meta tinsab hekk hatja tehel multa ta' mhux inqas minn mitt lira Maltija u mhux iktar minn ghaxart elef lira Maltija.
- (3) Il-Qorti tista' wkoll tordna lil persuna thallas multa ta' mhux iktar minn hamsin lira Maltija ghal kull ġurnata ta' nuqqas ta' tharis ta' xi ordni tad-Direttur li tkun saret taht dan l-Att.

- Ordni tal-Qorti. 107. Meta l-Qorti jirrizultalha li persuna tkun ghamlet reat taht dan l-Att jew regolamenti maghmulin tahtu, il-Qorti tista', minghajr preġudizzju ghal kull ordni ohra li tista' taghmel taht kull ligi ohra -
- (a) tordna r-restituzzjoni ta' kull flus, proprjeta' jew korrispettiv iehor li jkun inghata mill-konsumatur;
 - (b) taghmel ordni ta' twettiq speċifiku kontra dik il-persuna; u
 - (c) taghmel kull ordni ohra li l-Qorti tqis li tkun adattata.

- Preskrizzjoni ta' reati taht dan l-Att. 108. Il-prosekuzzjoni ta' reat taht dan l-Att ghandha tkun preskritta bl-iskadenza ta' tliet snin minn meta r-reat jiġi allegat li jkun sar.

- Eżenzjoni minn responsabbiltà. 109. Id-Direttur jew ufficjal pubbliku li jkun qed jagixxi taht id-direzzjoni jew il-kontroll tieghu jew membru tal-Kunsill filwaqt li jkunu qed iwettqu l-funzjonijiet taghhom taht dan l-Att, jew regolamenti maghmulin tahtu, ma ghandhomx ikunu responsabbli ghal xi telf jew hsara mgarrba minn xi persuna minhabba f'xi haġa maghmula jew li tithalla milli ssir bonafidi fil-kors ta' l-amministrazzjoni ta' dan l-Att jew ta' xi regolament maghmul tahtu.

Notifika ta' ordnijiet jew avviżi magħmulin taht dan l-Att.

110. (1) Meta ordni jew avviż ikunu mehtieġa jew awtorizzati li jiġu notifikati taht dan l-Att, dawn għandhom jiġu notifikati f'xi wiehed minn dawn il-modi li ġejjin:

(a) billi ssir il-kunsinna tagħhom, jew billi jintbagħtu bil-posta registrata lil min ikollhom jiġu notifikati fil-post ta' residenza, ufficċju jew post tax-xogħol relattiv; jew

(b) fil-każ ta' korp magħqud jew korp ieħor ta' persuni, bil-kunsinna tagħhom lil xi ufficċjal jew impjegat relattiv fl-ufficċju registrat jew f'xi post ieħor tal-kummerċ, jew billi jintbagħtu permezz ta' ittra registrata indirizzata f'xi ufficċju bħal dak.

(2) F'kull każ meta ma jkunx raġonevolment possibbli li ssir notifika b'xi mod bħal dak imsemmi fis-subartikolu (1) ta' dan l-artikolu, id-Direttur jista' jagħmel in-notifika billi jippubblika dak l-avviż fil-qosor fil-Gazzetta u f'żewġ gazzetti ta' kuljum.”.

Thassir ta' l-Att dwar ir-Restrizzjoni tal-Proġetti ta' Bolli tal-Kummerċ, Kap. 182.

16. L-Att dwar ir-Restrizzjoni tal-Proġetti ta' Bolli tal-Kummerċ, Kap. 182, qieghed b'dan jiġi mħassar.

Emendi konsegwenzjali għall-Att dwar Bejjiegha Bieb b'Bieb, Kap. 317.

17. L-Att dwar Bejjiegha Bieb b'Bieb, Kap. 317, għandu jiġi emendat kif ġej:

(a) minflok it-titolu ta' l-Att għandu jidhol it-titolu “Att dwar Kuntratti fuq l-Ghatba tal-Bieb”;

(b) fl-artikolu 1 tiegħu, minflok il-kliem “l-Att dwar Bejjiegha Bieb b'Bieb” għandhom jidhlu l-kliem “l-Att dwar Kuntratti fuq l-Ghatba tal-Bieb”;

(c) minflok il-kliem “salesman” u “salesmen” kulfejn dawn jinsabu fit-test Inġliż ta' l-Att, għandhom jidhlu l-kliem “seller” u “sellers” rispettivament;

(d) l-artikolu 2 għandu jiġi emendat kif ġej:

(i) minflok it-tifsira ta' “fond kummerċjali” għandu jidhol dan li ġej

“ “fond kummerċjali” tinkludi l-fond jew kull post ieħor minn fejn jew li minn go fih kummerċjant regolament jiggstixxi l-attività kummerċjali tiegħu, u jinkludi posta f'fiera u posti tas-suq;”;

(ii) minnufih wara t-tifsira ta' "konsumatur" ghandha tidzied din it-tifsira g'dida li g'ejja:

“ “Kunsill” tfisser il-Kunsill ghall-Affarijiet tal-Konsumatur, imwaqqaf bl-Att dwar l-Affarijiet tal-Konsumatur;”;

(iii) minflok it-tifsira ta' "kuntratt magħmul fuq l-ghatba tal-bieb" ghandha tidhol din li g'ejja:

“ “kuntratt magħmul fuq l-ghatba tal-bieb” tfisser kuntratt għall-provdiment jew forniment ta' oġġetti jew servizzi minn bejjiegh bieb b'bieb li jaġixxi jew f'ismu proprju jew f'isem xi kummerċjant, liema kuntratt ikun gie negozjat fid-dar tal-konsumatur jew fuq il-post tax-xogħol tiegħu jew f'kull post jew fond 'il bogħod mill-fond tax-xogħol tal-bejjiegh bieb b'bieb jew tal-kummerċjant li jkun qed jaġixxi f'ismu, inklużi kuntratti li jsiru matul eskursjoni organizzata minn kummerċjant 'il bogħod mill-fond kummerċjali tiegħu, jew matul zjara minn kummerċjant f'dar il-konsumatur jew f'dik ta' xi konsumatur iehor, jew fuq il-post tax-xogħol tal-konsumatur;”;

(iv) fit-tifsira ta' "bejjiegh bieb b'bieb", minflok il-kliem "persuna li toffri oġġetti għall-bejgħ ġewwa d-djar" għandhom jidhlu l-kliem "persuna li toffri l-provdiment jew il-forniment ta' kull tip ta' oġġetti jew servizzi permezz ta' kuntratt magħmul fuq l-ghatba tal-bieb”;

(v) minnufih wara t-tifsira ta' "konsumatur" ghandha tidhol din it-tifsira g'dida li g'ejja:

“ “kummerċjant” għandu jkollha t-tifsira mogħtija lilha bl-Att dwar l-Affarijiet tal-Konsumatur, u tinkludi lil kull persuna li taġixxi f'isem, għan-nom ta' jew fl-interess ta' kummerċjant jew taħt l-ordni ta' kummerċjant, u tinkludi iktar minn hekk lil xi persuna li tkun qegħda taġixxi biex tavvanza xi interess professjonali, u, sakemm ir-rabta tal-kliem ma tkunx teħtieġ xort'ohra, tinkludi wkoll lill-bejjiegh bieb b'bieb;”;

(vi) minnufih wara t-tifsira ta' "Ministru" għandhom jidhlu dawn it-tifsiriet godda li g'ejjin:

“ “ogġetti” jinkludu kull ogġett jew haga, sew tangibbli jew mhux tangibbli, li tista’ tkun l-ghan ta’ xi kummerċ;

“servizzi” ghandu jkollha t-tifsira lilha mogħtija taħt l-Att dwar l-Affarijiet tal-Konsumatur, iżda ghandha teskludi kuntratti ta’ l-assigurazzjoni.”;

(e) l-artikolu 3 ghandu jiġi emendat kif ġej:

(i) fil-paragrafu (a), minflok il-kliem “b’inizjattiva tal-konsumatur:” ghandhom jidhlu l-kliem “b’inizjattiva tal-konsumatur meta l-kuntratt ikun esklużivament jolqot l-ogġetti jew is-servizzi li dwarhom il-konsumatur ikun talab iż-żjara tal-kummerċjant:”;

(ii) il-paragrafu (g) ghandu jithassar;

(f) l-artikolu 4 ghandu jiġi emendat kif ġej:

(i) minflok il-kliem “Id-Direttur ma ghandux johroġ” fis-subartikolu (2) tiegħu ghandhom jidhlu l-kliem “Sakemm ma jiġix preskritt xort’ohra, d-Direttur ma ghandux johroġ”;

(ii) minflok il-paragrafu (i) tas-subartikolu (2) tiegħu ghandu jidhol dan li ġej:

“(i) ikun individwu li jkun lahaq l-età legali;”;

(iii) fil-paragrafu (ii) tas-subartikolu (2) tiegħu, minflok il-kliem “li jkun juri li hu ta’ kondotta tajba;” ghandhom jidhlu l-kliem “li jkun juri li hu ta’ kondotta tajba, u iktar minn hekk jipproduċi kull prova ohra dwar l-integrità, l-kredibilita` u l-kompetenza tiegħu hekk kif id-Direttur jista’ jkun jeħtieġ jew hekk kif jista’ jiġi preskritt;”;

(iv) is-subartikolu (4) ghandu jiġi enumerat mill-ġdid bħala s-subartikolu (5); u

(v) minnufih wara s-subartikolu (3) tiegħu ghandu jidhol dan is-subartikolu ġdid li ġej:

“(4) Id-Direttur jista’ f’kull żmien jirtira jew jissospendi jew jiċhad li jġedded liċenza taħt dan l-artikolu, jekk id-detentur tal-liċenza jkun aġixxa bi ksur ta’ xi wiehed mill-provvedimenti ta’ dan l-Att jew inkella jkun insab hati ta’ xi reat taħt dan l-Att, taħt l-Att dwar l-Affarijiet tal-Konsumatur, jew taħt ir-regolamenti magħmulin taħthom.”;

(ġ) is-subartikolu (2) ta' l-artikolu 5 tiegħu għandu jiġi emendat kif ġej:

(i) minflok il-kliem “ikun null:” għandhom jidhlu l-kliem “ikun jista’, jekk hekk jagħzel il-konsumatur, jiġi annullat.”; u

(ii) minflok il-kliem “minn meta il-prodott li għalih jirreferi l-kuntratt ikun ġie kunsinnat” għandhom jidhlu l-kliem “minn meta l-oġġetti jew is-servizzi li għalihom jirreferi l-kuntratt ikunu ġew kunsinnati jew provvisti”;

(h) minnufih wara l-artikolu 5 tiegħu għandu jżidied dan l-artikolu 5A ġdid:

“Min jikkummerċja bieb b’bieb għandu jwarrab meta jintalab jagħmel dan.

5A. Min imur fid-dar jew fuq il-post tax-xogħol ta’ konsumatur bil-għan li jikkummerċja kuntratt magħmul fuq l-għatba tal-bieb jew għal xi raġuni inċidentali jew relatata, għandu jwarrab minn dak il-post meta jintalab jagħmel hekk mill-konsumatur. Kull min jonqos li jwarrab minn dik id-dar jew minn fuq dak il-post tax-xogħol meta jintalab jagħmel dan ikun hati ta’ reat kontra dan l-Att u jista’ jehel meta jinsab hati multa ta’ mhux aktar minn hames mitt lira Maltija.”;

(i) l-artikolu 7 għandu jiġi emendat kif ġej:

(i) fil-paragrafu (e), minflok il-kliem “l-oġġetti mibjugħa;” għandhom jidhlu l-kliem “l-oġġetti jew is-servizzi li għalihom jirreferi l-kuntratt;”; u

(ii) minflok il-paragrafi (f), (ġ), (h) u (i) għandu jidhol dan li ġej:

“(f) il-prezz li bih kellhom jiġu provvisti l-oġġetti jew is-servizzi, u l-pattijiet tal-hlas, inklużi dettalji shaħ dwar kull imghax u hlasijiet ohra;

(ġ) iż-żmien stipulat għall-provvista ta’ l-oġġetti jew tas-servizzi, liema żmien ma għandu f’ebda każ jaqbeż is-sittin gurnata mid-data tal-ftehim privat;

(h) klawżola li tkun stampata b’mod ċar u b’tipi grassi u b’emfasi li l-konsumatur ikollu d-dritt iħassar il-kitba privata skond id-dispożizzjonijiet ta’ l-artikolu 8 ta’ dan l-Att;

- (i) dawk il-kondizzjonijiet jew partikolaritajiet addizzjonali ohra hekk kif il-Kunsill jista' jkun jehtieg minn zmien ghal zmien;";
- (j) minflok l-artikolu 8 ghandu jidhol dan li gej:

“Thassir ta’
kuntratt
maghmul
fuq l-ghatba
tal-bieb.

8. (1) Kuntratt maghmul fuq l-ghatba tal-bieb ma jkunx jorbot u konkluziv jekk dan jithassar mill-konsumatur kif provdut f’dan l-artikolu: sakemm it-thassir isir fi zmien hmistax il-gurnata mid-data tal-kitba privata, jew f’dak iz-zmien itwal li jista’ jigi stipulat fil-kitba privata.

(2) It-thassir ta’ kuntratt fuq l-ghatba tal-bieb jista’ jsir b’kull mod sakemm titwassal sew l-intenzjoni mill-konsumatur lill-bejjiegh bieb b’bieb jew lill-kummercjant li f’ismu l-bejjiegh ikun qiegħed jağixxi. It-thassir jista’ jsir bil-fomm, permezz ta’ messagğ bit-telefon jew *telefax*, jew bil-kunsinna, sew bl-idejn sew bil-posta ordinarja jew registrata fl-indirizz permanenti tal-bejjiegh jew tal-kummercjant bieb b’bieb, ta’ avviz ta’ formola ta’ thassir li tkun iffirmata mill-konsumatur jew minn xi persuna li tkun debitament awtorizzata li tirrappreżentah.

(3) Tista’ tintuza formola ta’ thassir fl-ghamla stabbilita fl-Iskeda li tinsab ma’ dan l-Att minn konsumatur li jkun irid iħassar kuntratt maghmul fuq l-ghatba tal-bieb. Kopja ta’ formola ta’ thassir bhal dik ghandha f’kull każ tkun mehmuza mal-kopja tal-ftehim privat li jinżamm mill-konsumatur. Jekk il-konsumatur ikun irid jagħmel uzu mill-formola ta’ thassir huwa jista’ jiffirma dik il-formola u jikkunsinnaha lill-bejjiegh bieb b’bieb jew lill-kummercjant li jkun qed jağixxi f’ismu.

(4) Ikun dmir bejjiegh bieb b’bieb li jmur għand konsumatur li jgharrfu minnufih bil-kapaçità tieghu ta’ bejjiegh bieb b’bieb, tar-rağuni ghaliex ikun qiegħed iżuru, li jidentifika lilu nnifsu sew, u li jispjeğa sew lill-konsumatur bid-drittijiet li jkollu li jħassar hekk kif dawn jitnisslu taħt dan l-artikolu u bil-possibilità li juza l-formola ta’ thassir.”;

(k) minflok is-subartikolu (2) ta’ l-artikolu 10 tieghu, għandu jidhol dan is-subartikolu gdid li gej:

“(2) Il-konsumatur għandu jkollu d-dritt li jħassar kuntratt maghmul fuq l-ghatba tal-bieb għal kawza ġusta, jew minħabba fil-ksur mill-bejjiegh b’bieb ta’ xi dispozizzjoni ta’ l-artikolu 9.”;

(l) l-artikolu 11 għandu jigi emendat kif gej:

(i) minflok il-kliem “tal-qorti kompetenti f’Malta,” ghandhom jidhlu l-kliem “tal-qorti kompetenti f’Malta, jew” u

(ii) minnufih wara l-paragrafu (b) tieghu ghandu jiddahhal dan il-paragrafu gdid li ġej:

“(ċ) intiza biex tnehhi jew tnaqqas xi wiehed mid-drittijiet moghtija lill-konsumatur b’xi wiehed mill-provvedimenti ta’ dan l-Att, jew li jillimita jew inehhi l-kompetenza tal-qorti jew tribunali lokali,”;

(m) l-artikolu 12 ghandu jiġi emendat kif ġej:

(i) minflok il-kliem “fil-konklużjoni tal-kuntratt magħmul fuq l-ghatba tal-bieb,” fil-paragrafu (ċ), ghandhom jidhlu l-kliem “fil-konklużjoni tal-kuntratt magħmul fuq l-ghatba tal-bieb, jew”; u

(ii) minnufih wara l-paragrafu (ċ), ghandu jidhol dan il-paragrafu li ġej:

“(d) l-allegazzjoni li d-dritt ta’ thassir ma jkunx ġie eżerċitat mill-konsumatur fil-perjodu stabbilit taht l-artikolu 8,”; u

(n) fl-artikolu 15 tieghu:

(i) il-paragrafu (f) tieghu ghandu jiġi enumerat mill-gdid bhala l-paragrafu (h) tieghu; u

(ii) minnufih wara l-paragrafu (e) ghandhom jidhlu dawn il-paragrafi (f) u (g) godda li ġejjin:

“(f) il-htigiet u l-kwalifiki għall-hruġ ta’ licenza;

(g) dawk l-oġġetti jew servizzi li ma jistghux jinbieghu permezz ta’ kuntratt magħmul fuq l-ghatba tal-bieb;”.

18. Minflok il-paragrafu (ċ) tas-subartikolu (1) ta’ l-artikolu 47 ta’ l-Att dwar Servizzi ta’ l-Ivvjaġġar u tat-Turizmu għal Malta, ghandu jidhol dan li ġej:

Emenda ta’
l-Att dwar
Servizzi ta’
l-Ivvjaġġar u
tat-Turizmu
għal Malta,
Kap. 409.

“(ċ) jirregola kuntratti ta’ *time-share* u l-promozzjoni ta’, u servizzi provduti ġewwa fondi ta’ *time-sharing*, inklużi minghajr preġuduzzju għall-generalità ta’ dak hawn aktar qabel imsemmi l-informazzjoni li għandha tinghata lil xerrejja prospettivi u l-ilsien li bih għandha tinghata dik l-informazzjoni, il-forma li fiha għandu jiġi abbozzat dak il-kuntratt, l-għemil ta’ dawk il-perjodi ta’ transizzjoni li matulhom u dawk iċ-ċirkostanzi l-oħra li fihom ix-xerrej jista’ jirtira mill-kuntratt, kif ukoll il-projbizzjoni ta’ xi pagamenti jew ta’ dawk il-pagamenti li jistgħu jiġu stabbiliti qabel ma jitlestha kull fond li għalih jirreferixxi l-kuntratt jew il-kuntratti, kif ukoll l-impożizzjoni ta’ obligazzjoni għall-ħlas lura ta’ dawk id-depożiti li jistgħu jiġu preskritti jekk issir rexissjoni tal-kuntratt jew ix-xerrej jirtira minnu.

Dawk ir-regolamenti jistgħu jipprovdu li l-kuntratt ta’ *time-sharing* għandu jiehu dik il-forma li tista’ tiġi preskritta minkejja kull provvediment ta’ xi liġi oħra li tgħid il-kuntrarju u li għandu jiġi abbozzat f’ dak l-ilsien jew dawk l-ilsna li jistgħu jiġu preskritti.

Dawk ir-regolamenti jistgħu wkoll jipprovdu li fil-każ ta’ nuqqas li wiehed jimxi skond xi wiehed mill-provvedimenti tiegħu skond kif jista’ jiġi preskrit, il-kuntratt ikun null. Dawk ir-regolamenti jistgħu wkoll jirregolaw faċilitajiet ta’ kreditu li jistgħu jiġu konċessi ma’ dawk il-kuntratti u l-effett li rexissjoni jew irtirar mill-kuntratt jista’ jkollhom fuq kull ftehim dwar kreditu bħal dak, u kull haġ’oħra li jkollha x’taqsam mal-bejgħ ta’ *time-share* u ftehim ta’ *time-share*.”.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 385 tas-6 ta’ Ottubru, 2000.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

I assent

(L.S.)

GUIDO DE MARCO
President

17th October, 2000

ACT No. XXVI of 2000

AN ACT to amend the Consumer Affairs Act, Cap. 378, and to provide for other matters ancillary and consequential thereto

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) The title of this Act is the Consumer Affairs (Amendment) Act, 2000 and shall be read and construed as one with the Consumer Affairs Act, hereinafter referred to as "the principal Act".

Short title and commencement.
Cap. 378.

(2) This Act shall come into force on such day as the Minister responsible for Consumer Affairs may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes of this Act.

2. Article 2 of the principal Act shall be amended as follows:

(a) immediately before the definition of "consumer" there shall be inserted the following new definition:

Amendment of section 2 of the principal Act.

“ “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;”;

(b) for the definition of “consumer”, there shall be substituted the following:

“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 benefitted 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 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;”;

(c) for the definition of the word “goods”, there shall be substituted the following:

“ “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;”;

(d) immediately after the definition of “premises” there shall be inserted the following new definition:

“ “qualifying body” means a registered consumer association and any other body whether constituted in Malta or otherwise as the Minister may, after consulting the Council, designate by notice in the Gazette;”;

(e) immediately after the definition of “registered consumer association”, there shall be inserted the following new definition:

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

(f) for the definition of the word “trader”, there shall be substituted the following:

“ “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 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;”;

and

(g) immediately before the definition of “Tribunal” there shall be inserted the following:

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

3. Article 4 of the principal Act shall be amended as follows:

Amendment of
article 4 of the
principal Act.

(a) paragraph (b) of subarticle (7) thereof shall be deleted and paragraphs (c) to (e) of the said subarticle shall be renumbered, respectively as paragraphs (b) to (d); and

(b) in subarticle (9) thereof for the words “in the Department”, there shall be substituted the words “in the public service”.

4. Article 7 of the principal Act shall be substituted by the following:

"Power to
make
regulations.

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 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 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 and to the Council, or to any of them, 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 section may provide that any person who contravenes any provision of the regulations shall be guilty of an offence, and may prescribe penalties for such offences against any regulation, provided that the penalty for such offences shall in no case exceed a fine (*multa*) of more than two thousand Maltese liri. Different penalties may be prescribed for different offences.”

Amendment of article 8 of the principal Act.

5. In subarticle (1) of article 8 of the principal Act for the words “may, with the concurrence of the Council, on his initiative or upon a proposal of the Council, make” there shall be substituted the words “may, with the concurrence of the Chairman in case of urgency, or of the Council, make”.

Amendment of article 9 of the principal Act.

6. In subarticle (3) of article 9 of the principal Act the words “or a term of imprisonment not exceeding six months or to both such fine and imprisonment” shall be deleted.

Amendment of article 12 of the principal Act.

7. Article 12 of the principal Act shall be amended as follows:

(a) immediately at the end of subarticle (1) thereof, there shall be added the following words:

“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.”; and

(b) in subarticle (4) thereof, for the words “shall be guilty of an offence”, there shall be substituted the words “shall, without prejudice to any liability arising under this or any other law, be guilty of an offence”, and for the words “fifty Maltese liri” there shall be substituted the words “one hundred Maltese liri”.

Amendment of article 13 of the principal Act.

8. Article 13 of the principal Act shall be amended as follows:

(a) in subarticle (2) thereof, for the words “the Director may” there shall be substituted the words “Director, or an official of the Department duly authorised to act in his stead, may”; and

(b) in subarticle (3) thereof, immediately after the word “Director” there shall be inserted the words “or the official conducting the prosecution”.

Amendment of article 20 of the principal Act.

9. Article 20 of the principal Act shall be amended as follows:

(a) for the words “five hundred Maltese liri”, wherever they appear, there shall be substituted the words “one thousand five hundred Maltese liri”; and

(b) in subarticle (1) for the words “arises out of or concerns”, there shall be substituted the words “arises out of or concerns, whether directly or indirectly”.

10. In subarticle (1) of article 22 of the principal Act, for the words from “the date of the decision” to the end of the subarticle, there shall be substituted the words “the date of the decision to the Court of Appeal composed in accordance with the provisions of subarticle (6) of article 41 of the Code of Organization and Civil Procedure or any provision in substitution thereof.”

Amendment of article 22 of the principal Act.

11. Article 23 of the principal Act shall be amended as follows:

Amendment of article of the principal Act.

(a) in paragraph (e) of subarticle (2) thereof:-

(i) for the words “to witnesses.” in paragraph (e) thereof there shall be substituted the words “to witnesses; and”;

(ii) immediately after paragraph (e) there shall be inserted the following:

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

(b) in subarticle (4) thereof:

(i) in paragraph (a) thereof, for the words “to the Director” there shall be substituted the words “to the Director or a registered consumer association”;

(ii) in paragraph (b) thereof for the words “to the Director” there shall be substituted the words “to the Director or the registered consumer association, as the case may be.”

12. Immediately at the end of subarticle (1) of article 25 of the principal Act, there shall be added the following proviso:

Amendment of article 25 of the principal Act.

“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 fifty Maltese liri (Lm50). Any such order shall be motivated and enforceable in the same manner as a decision of the Tribunal.”

13. In paragraph (a) of article 28 of the principal Act, for the words “two hundred and fifty members”, there shall be substituted the words “one hundred members”.

Amendment of article of the principal Act.

Renumbering of Part V of the principal Act.

14. (a) The heading “Part V Miscellaneous” appearing before article 43 of the principal Act shall be substituted by the following:

**“Part XI
Miscellaneous”;** and

(b) Articles 43 to 45 of the principal Act shall be renumbered as articles 111 to 113 respectively.

Addition of new Parts V, VI, VII, VIII, IX and X to the principal Act.

15. The following new Parts shall be added immediately after article 42 of the principal Act:

Immediately after article 42 of the principal Act, there shall be added the following:

“PART V

DECLARATION OF PRINCIPLES

Consumer Rights.

43. (1) The principles stated in subarticle (2) of this article 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:

(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

UNFAIR PRACTICES

Prohibited terms.

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) hereof, 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) of this article 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 against the trader in the event of total or partial non-performance 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;

(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 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; and

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

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

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

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

Meaning
of an
unfair term.

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

(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.

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

Misleading advertisements. 48. (1) Any form of misleading advertising is prohibited.

(2) An advertisement is misleading if in any way, including its presentation, it deceives or is likely to deceive the persons to whom it is addressed or whom it reaches, and if by reason of its deceptive nature, it is likely to affect their economic behaviour or is one which for those reasons, injures or is likely to injure a competitor of the person whose interests the advertisement seeks to promote.

(3) In determining whether an advertisement is misleading account shall be taken of all its features, and in particular of any information it may have about:

(a) the characteristics of goods or services, including their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, uses, quantity, specification, geographical or commercial origin or the results to be expected from their use, or the results and material features of tests or checks carried out on the goods or services;

(b) the price or the manner in which the price is calculated, and the conditions on which the goods are supplied or the services provided;

(c) the nature, attributes and rights of the advertiser, including his identity and assets, his qualifications and ownership of industrial, commercial

or intellectual property rights or any awards and distinctions made to him.

(4) Any person who makes a misleading advertisement shall be guilty of an offence against this Part of this Act.

Meaning of comparative advertising.

49. (1) "Comparative advertising" means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.

(2) Any person who makes an advertisement constituting comparative advertising other than as permitted under article 50 shall be guilty of an offence against this Act.

Permitted comparative advertising.

50. (1) Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:

(a) it is not a misleading advertisement in accordance with article 48 or otherwise;

(b) it compares goods or services meeting the same needs or intended for the same purpose;

(c) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which features may include price;

(d) it does not create confusion in the market place between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor;

(e) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;

(f) for products with designation of origin, it relates in each case to products with the same designation;

(g) it does not take unfair advantage of the reputation of a trade mark, trade name or other

distinguishing marks of a competitor or of the designation of origin of competing products; and

(h) it does not present goods or services as imitations or replicas of goods or services bearing a protected mark or trade name.

(2) Any comparison referring to a special offer shall indicate in a clear and unequivocal way the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of the goods and services, and where the special offer has not yet begun the date of the period during which the special offer shall apply. "Special offer" in this subarticle refers to the price of the goods or services or any other specific condition under which the goods or services will be supplied.

Offering gifts and prizes.

51. A trader who, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services, offers gifts, prizes, or other free items,

(a) fails to provide them or does not provide them as offered; or

(b) fails to clearly disclose all the terms and conditions for obtaining them; or

(c) fails to give a clear and full description of the gifts, prizes or other free items being offered;

shall be guilty of an offence against this Part of this Act.

Pyramid selling schemes.

52. (1) All forms of pyramid selling schemes however described shall be prohibited. Schemes or activities in which a significant or material element consists of a pyramid selling activity shall also be considered as a pyramid selling scheme for the purposes of this article.

(2) A person who establishes, operates or promotes a pyramid selling scheme shall be guilty of an offence against this Part of this Act.

(3) For the purposes of this article, the term "pyramid selling scheme" means -

(a) a scheme -

that provides for the supply of goods or services or both for reward;

that to many participants in the scheme constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to supply goods or services; and

that is or is likely to be unfair to many of the participants in that scheme in that -

(i) the financial rewards of those participants are principally dependent on the recruitment of additional participants, whether or not at successively lower levels; and

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

(b) a scheme of the type similar to a chain letter scheme, whether or not it provides for the supply of goods or services, that is unfair to many of the participants in the scheme in that -

(i) the financial rewards of many 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 many of the participants in the scheme.

(4) Participants, other than those referred to in subarticle (2) of this article, in any pyramid selling scheme shall be entitled not later than two years from the date on which they have made the last payment to demand a full refund of any monies paid by them into the scheme.

Misleading representations about certain schemes or activities.

53. (1) A person who makes a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any work from home scheme or other similar schemes or activities 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 offence 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) of this article 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 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 in a material particular, shall be guilty of an offence against this Part of this Act.

Offences.

54. A person who is guilty of an offence against this Part of this Act shall on conviction be liable to a fine (*multa*) of not less than two hundred Maltese liri and not more than two thousand Maltese liri.

Applicability over other laws.
Cap. 16.
Cap 13.
Cap. 313.

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

PART VII

LIABILITY FOR DEFECTIVE PRODUCTS

Interpretation.

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
- (d) the producer of any products of the soil, of stock-farming 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 Malta, any person who imports into Malta a product for sale, hire, leasing or any other form of distribution.

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

Proof of damage and defect. 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. 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

(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 do so within thirty days from when the request was made to him.

(2) A request under subarticle (1) of this article 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) of this article within the period therein indicated.

Defective product.

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.

Damages that are recoverable. are:

61. Damages that may be recovered under this Part

(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 two hundred liri, 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.

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 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

Cap. 12.

(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.

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.

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.

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.

Limitation
of action.

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.

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) of this article, 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.

Cap. 16.

(3) Sub-titles I, II and III of Title XXV of the Civil Code 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 producer.

Prohibition of exclusion of liability. 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. 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. 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. 71. This Part shall apply to products which are put into circulation in Malta after the coming into force of this Part.

PART VIII

SALE OF GOODS TO CONSUMERS

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

Interpretation. “commercial guarantee” means any representation or undertaking however described or given by a trader or a producer to a 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 Malta 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 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.

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:

Conformity
with the
contract.

(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 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 labeling.

(2) The obligations of the trader under subarticle (1) of this article 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 paragraph (d) of subarticle (1) of this article unless he:

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

(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.

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 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 subarticle (1) of article 75, 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 subarticles (1) or (2) of article 76.

Repair or replacement of goods.

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.

(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.

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

(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.

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.

Prescription.

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 of prescription 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.

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.

Presumption of existence of lack of conformity.

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.

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.

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.

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;

(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 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.

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 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.

85. (1) 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.

(2) The provisions in this Part shall apply in all cases where the contract for the sale of goods to a consumer has been concluded in Malta or otherwise has a close connection with Malta, or such other countries 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. Accordingly the rights arising in favour of consumers under this Part shall remain applicable and shall not be affected

by the adoption of the law of a country not falling under the provisions of this Part.

Guarantor may ask only for charges as stipulated. 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. 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. 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. 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. 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. 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 fifty Maltese liri for each day of default in case of non-compliance after the lapse of the period established by the Court.

Provisions to prevail over other laws.

92. The provisions of this Part where they are more favourable to the consumer, shall prevail over the provisions of any other law.

Replacement parts, repair service where goods require maintenance.

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.

PART IX

COMPLIANCE ORDERS

Issue of Compliance Orders.

94. (1) Where he feels it reasonably appropriate or necessary in the public interest, the Director may, of his own initiative or on a written application to him by a qualifying body, issue a compliance order -

(a) on any person requiring -

(i) the deletion or alteration of terms in a consumer contract which the Director 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 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, promoting or undertaking, or proposing to engage in or undertake or promote any advertising which is misleading or is not permitted comparative advertising in terms of Part VI of this Act, to discontinue or refrain from such advertising;

(c) requiring any person to take any measures specified in the compliance order, 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 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 Director 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 institute an action before the Court 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 qualifying body on whose application the compliance order is issued.

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

(4) A qualified body, 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.

Discretion of Director to issue a compliance order.

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

(2) If the Director decides not to issue a compliance order after an application has been made to him by a qualifying body, he shall, within seven days from the date of his decision, notify in writing the qualifying body and the persons against whom the compliance order is requested with his decision stating his reasons therefor.

(3) A qualifying body may within fifteen days from the date of notification upon it of the decision of the Director not to issue a compliance order, institute an action before the Courts of Magistrates in their civil jurisdiction for the issue of an order requiring the Director 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 qualifying body to notify such persons accordingly.

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

Compliance order to take immediate effect. Application for revocation of a compliance order.

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

97. (1) A person against whom a compliance order has been made may, within fifteen days of the notification of the compliance order on him, institute an action before the Courts of Magistrates in their civil jurisdiction for a revocation 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 Court may confirm, change or cancel the compliance order on any terms or conditions it considers appropriate.

(3) Where an action is instituted under subarticle (1) of this article, the compliance order shall be stayed pending the outcome of the case. The Director may however, if he considers it appropriate or necessary in the public interest, request the court to make an order, hereinafter referred to as an interim compliance order, ordering that the compliance order may subject to such modifications as the Court may in the interim compliance order determine, continue in force pending the final determination of the case instituted in accordance with subarticle (1) of this article. An interim compliance order shall expire upon the the final determination of the case.

(4) A person against whom a compliance order has been made may not institute an action before the Court in terms of this article if he has already been made a party to the suit in terms of article 95.

Cases to be heard and determined with urgency.

98. Actions instituted under articles 95 and 97 shall be heard and determined by the Court with urgency and as expeditiously as possible.

No need to prove actual loss etc.

99. The Director, 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.

Director to seek voluntary compliance.

100. The Director 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 may require publication.

101. The Director, in order to eliminate or 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, may by notice in writing require 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

(b) to publish a corrective statement in relation to any contravention 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;

Publication shall be made in at least two daily newspapers within seven days from receipt of the notice and shall be at the expense of the person served with such notice. Where such publication is not effected as aforesaid, the Director 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.

PART X

ENFORCEMENT

Production
of written
authorisation.

102. The Director may in writing authorise a public officer to perform any of his functions or exercise any power granted to him under this Part. Any such officer shall when required, produce the written authorisation signed by the Director.

Entry of
inspection.

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

(a) enter and search any premises other than premises 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 has reason to believe that delay could cause the loss of necessary information.

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

(4) If the Director 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.

(5) Nothing in this Part shall be deemed to detract from the powers of the Police under the Criminal Code or any other law. Cap. 9

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

Obtaining information. 104. (1) The Director 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 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.

Obstruction
of Director.

105. Any person who:

(a) wilfully obstructs, assaults, threatens, resists or interferes with the Director or a public officer 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 or a public officer in the course of his duties under this Part,

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

Offences.

106. (1) Any person who –

(a) fails to comply with a compliance order issued under this Act or regulations made thereunder;

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

shall be guilty of an offence against this Act.

(2) 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*) of not less than one hundred Maltese liri and not more than ten thousand Maltese liri.

(3) The Court may also order any person to pay a fine (*multa*) of not more than fifty Maltese liri for each day of non-compliance with an order of the Director made under this Act.

Court order.

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.

Prescription of offences under this Act.

108. The prosecution of an offence under this Act shall be prescribed by the lapse of three years from the date on which the offence is alleged to have been committed.

Exemption from liability.

109. The Director or any public officers acting under his direction or control or any member of the Council in the performance of their functions under this Act, or any regulations made thereunder, shall not be liable for any loss or damage suffered by any person by reason of anything done or omitted to be done in good faith in the course of the administration of this Act or any regulation made thereunder.

Service of orders or notices under this Act.

110. (1) Where an order or notice is required or authorised to be served under this Act, it shall be served in any of the following manners:

(a) by delivering it, or by sending it by registered mail to the person on whom it is to be served at his place of residence, office or place of work; or

(b) in the case of a body corporate or other body of persons, by delivering it to an officer or servant thereof at the registered office or any other place of business, or sending it in a registered letter addressed to any such office.

(2) In any case where it is not reasonably possible to effect service in any manner stated in subarticle (1) of this article, the Director may effect service by publishing a summary of such notice in the Gazette and any two daily newspapers.”.

16. The Trading Stamps Schemes (Restriction) Act, Cap. 182, is hereby repealed.

Repeal of Trading Stamps Schemes (Restriction) Act, Cap 182.

17. The Door to Door Salesmen Act, Cap. 317, shall be amended as follows:

Consequential amendments to the Door to Door Salesmen Act, Cap. 317.

(a) the title to the Act shall be substituted by “the Doorstep Contracts Act”;

(b) in article 1 thereof, for the words “Door-to-Door Salesmen Act” there shall be substituted the words “Doorstep Contracts Act”;

(c) for the words “salesman” or “salesmen” wherever they appear in the English text of the Act, there shall be substituted the words “seller” and “sellers” respectively;

(d) article 2 shall be amended as follows:

(i) for the definition of “business premises”, there shall be substituted the following:

“ “business premises” include the premises or any other place where or from which a trader regularly carries on business activity, and include stalls at fairs and markets;”;

(ii) immediately after the definition of “consumer” there shall be added the following new definition:

“ “Council” means the Consumer Affairs Council established by the Consumers Affairs Act;”;

(iii) for the definition of “doorstep contact”, there shall be substituted the following:

“ “doorstep contract” means a contract for the provision or supply of goods or services to a consumer by a door-to-door seller acting either on his own behalf or on behalf of a trader, which contract has been negotiated at the consumer’s home or place of work or at any other place or premises away from the business premises of the door-to-door seller or of the trader on whose behalf he is acting, including contracts concluded during an excursion organised by the trader away from his business premises, or during a visit by a trader to the consumer’s home or to that of another consumer, or to the consumer’s place of work;”;

(iv) in the definition of “door-to-door salesman”, for the words “a person who offers goods for sale in homes” there shall be substituted the words “a person who offers the provision or supply of any type of goods or services by means of a doorstep contract”;

(v) immediately after the definition of “door-to-door salesman” there shall be added the following definition:

“ “goods” include any article or thing, whether tangible or intangible, which may form the object of trade;”;

(vi) immediately after the definition of “prescribe” there shall be added the following definitions:

“ “services” shall have the meaning assigned to it under the Consumer Affairs Act, but shall exclude contracts of insurance;

“ “trader” shall have the meaning assigned to it by the Consumer Affairs Act, and includes any person acting in the name, on behalf or in the interest of a trader or under the trader’s direction, and further includes a person who is acting in furtherance of a professional activity, and, unless the context otherwise requires, includes also the door-to-door seller.”;

(e) article 3 shall be amended as follows:

(i) in paragraph (a), for the words “at the initiative of the consumer:”, there shall be substituted the words “at the initiative of the consumer where the contract exclusively concerns the goods or services regarding which the consumer requested the visit of the trader.”;

(ii) paragraph (g) shall be deleted;

(f) article 4 shall be amended as follows:

(i) for the words “The Director shall not issue” in subarticle (2) thereof there shall be substituted the words “Unless otherwise prescribed, the Director shall not issue”;

(ii) paragraph (i) of subarticle (2) thereof shall be substituted by the following:

“(i) is an individual of majority age;”;

(iii) in paragraph (ii) of subarticle (2) thereof, for the words “showing that he is of good conduct;”, there shall be substituted the words “showing that he is of good conduct, and in addition produces such other evidence of his probity,

reliability and competence as the Director may require or as may be prescribed;”;

(iv) subarticle (4) shall be renumbered as subarticle (5); and

(v) immediately after subarticle (3) thereof there shall be inserted the following new subarticle:

“(4) The Director may at any time withdraw or suspend or refuse to renew a licence under this article, if the holder of the licence has acted in breach of any of the provisions of this Act or has been convicted of any offence under this Act, the Consumer Affairs Act, or any regulations made thereunder.”;

(g) subarticle (2) of article 5 thereof shall be amended as follows:

(i) for the words “shall be null:” there shall be substituted the words “shall, at the option of the consumer, be annulable:”; and

(ii) for the words “the date when the product to which the contract refers is delivered” there shall be substituted the words “the date when the goods or services to which the contract refers are delivered or supplied”;

(h) immediately after article 5 thereof there shall be added the following new article 5A:

“A person engaged in door-to-door trading to leave if requested to do so.

5A. A person who calls at the home or place of work of a consumer for the purpose of negotiating a doorstep contract or for an incidental or related purpose shall leave that place at the request of the consumer. Any person who fails to leave such home or place of work when so requested shall be guilty of an offence against this Act and shall on conviction be liable to a fine (*multa*) not exceeding five hundred Maltese liri.”;

(i) article 7 shall be amended as follows:

(i) in paragraph (e), for the words “the goods sold;”, there shall be substituted the words “the goods or services to which the contract refers;”; and

(ii) for paragraphs (f), (g), (h) and (i) there shall be substituted the following:

“(f) the price for which the goods or services were to be supplied, and the terms of payment, including full details regarding interests and any other charges;

(g) the time stipulated for the supply of the goods or services, which time shall in no case exceed sixty days from the date of the private agreement;

(h) a clause printed in clear, bold and highlighted type that the consumer has the right to cancel the private writing in accordance with the provisions of article 8 of this Act;

(i) such other additional conditions or particulars as the Council may require from time to time;”;

(j) for article 8 there shall be substituted the following:

“Cancellation
of doorstep
contract.

8. (1) A doorstep contract shall not be binding and conclusive if it is cancelled by the consumer as provided in this article: provided that cancellation is made within fifteen days from the date of the private writing, or within such longer period as may be stipulated in the private writing.

(2) Cancellation of a doorstep contract may be made in any manner provided the intention is substantially conveyed by the consumer to the door-to-door seller or to the trader on whose behalf he is acting. Cancellation may be effected by word of mouth, by means of telephone or telefax message, or by the delivery either by hand or by ordinary or registered post at the permanent address of the door-to-door seller or trader of a notice of cancellation form signed by the consumer or by a person duly authorised to represent him.

(3) A cancellation form in the form set out in the Schedule to this Act may be used by a consumer wishing to cancel a doorstep contract. A copy of such a cancellation form shall in all cases be attached to the copy of the private agreement retained by the consumer. If the consumer wishes to avail himself of the cancellation form he may sign such form and deliver it to the door-to-door seller or to the trader on whose behalf is acting.

(4) It shall be the obligation of a door-to-door seller who calls on a consumer to forthwith inform him of his status as a door-to-door seller, of the purpose of his call, to properly identify himself, and to properly explain to the consumer his rights of cancellation arising under this article and of the possibility to use the cancellation form.”;

(k) for subarticle (2) of article 10 thereof, there shall be substituted the following new subarticle:

“(2) The consumer shall have the right to cancel a doorstep contract for a just cause, or because of the violation by the door-to-door seller of any of the provisions of article 9.”;

(l) article 11 shall be amended as follows:

(i) for the words “by the competent court in Malta,” in paragraph (b) thereof, there shall be substituted the words “by the competent court in Malta, or”; and

(ii) immediately after paragraph (b) thereof there shall be inserted the following paragraph:

“(c) purports to remove or reduce any of the rights given to the consumer by any of the provisions of this Act, or to limit or remove the competence of local courts or tribunals,”;

(m) article 12 shall be amended as follows:

(i) for the words “in the conclusion of the doorstep contract,” in paragraph (c), there shall be substituted the words “in the conclusion of the doorstep contract, or”; and

(ii) immediately after paragraph (c), there shall be inserted the following paragraph:

“(d) the allegation that the right of cancellation had not been exercised by the consumer within the period established under article 8,”; and

(n) in article 15 thereof;

(i) paragraph (f) thereof shall be renumbered as paragraph (h) thereof; and

(ii) immediately after paragraph (e) there shall be inserted the following new paragraphs (f) and (g):

“(f) the requirements and qualifications for the issue of a licence;

(g) such goods or services that may not be sold by means of a doorstep contract;”.

18. For paragraph (c) of subarticle (1) of article 47 of the Malta Travel and Tourism Services Act, there shall be substituted the following:

Amendment of the Malta Travel and Tourism Services Act, Cap 409.

“(c) regulate time-share contracts and the promotion of and services provided in time-sharing resorts, including without prejudice to the generality of the foregoing the information that is to be given to prospective purchasers and the language in which such information is to be given, the form which such contract must be drawn up in, the establishment of such cooling-off periods during which and other circumstances in which the purchaser may withdraw from the contract, as well as the prohibition of any or such payments as may be determined before the premises to which the contract refers or the contracts are completed, as well as imposing an obligation for the repayment of such deposits as may be prescribed if the contract is rescinded or the purchaser withdraws therefrom. Such regulations may provide that the time-sharing contract shall take such form as may be prescribed notwithstanding any provision of any other law to the contrary and that it shall be drawn up in such language or languages or be accompanied by a certified translation in such language or languages as may be prescribed. Such regulations may also provide that in case of failure to abide by any of the provisions thereof as may be prescribed the contract may be null. Such regulations may also regulate credit facilities that may be granted with such contracts and the effect that a rescission or withdrawal from the contract may have on such credit agreements, and any other matter relating to the sale of time-share and time-share agreements.”.

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Passed by the House of Representatives at Sitting No. 385 of the 6th October, 2000.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives