

## **ABBOZZ TA' LIĠI msejjah**

*ATT biex jemenda l-Att Dwar l-Affarijiet tal-Konsumatur u biex jagħmel emendi f'liġijiet oħra*

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati mlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess hareġ bl-liġi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att ta' l-2007 li jemenda l-Att Dwar l-Affarijiet tal-Konsumatur, 2007. Titolu fil-qosor u bidu fis-sehh.
- (2) Sakemm mhux ipprovdut fil-partijiet varji tiegħu, dan l-Att għandu jidhol fis-sehh fit-12 ta' Diċembru, 2007.

### **Taqsim I**

#### **EMENDA TA' L-ATT DWAR L-AFFARIJJET TAL-KONSUMATUR**

2. Din it-Taqsim temenda u għandha tinqara u tiftiehem bhala wahda ma' l-Att dwar l-Affarijiet tal-Konsumatur hawn iżjed 'il quddiem imsejjah bhala "l-Att prinċipali". Emenda ta' l-Att dwar l-Affarijiet tal-Konsumatur. Kap. 378.
3. Fit-titolu twil ta' l-Att prinċipali, immedjatement wara l-kliem "Tribunali għat-Talbiet tal-Konsumatur" għandhom jiżdiedu l-kliem "u tal-Bord ta' l-Appell Għall-Affarijiet tal-Konsumatur". Emenda tat-titolu it-twil ta' l-Att prinċipali.
4. (1) It- "TAQSIM TA' L-ATT" ta' l-Att prinċipali għandu jkun sostitwit kif ġej: Emenda tat-Taqsim ta' l-Att.

## TAQSIM TA' L-ATT

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It-Tieni Skeda	Multi Amministrattivi	

(2) Ir-referenzi kollha għat-Taqsimiet kif kienu qabel ir-rinumerazzjoni f'kull leġislazzjoni għandhom, mit-12 ta' Diembru 2007, jiftehmu bhala referenzi għat-Taqsimiet kif issa rinumerati.

Emenda ġenerali ta' l-artikoli 2, 3, 102 u 104A ta' l-Att prinċipali.

**5.** Il-kliem “Regolament dwar il-koperazzjoni u l-protezzjoni tal-konsumatur” kull fejn jidhru fl-artikoli 2, 3, 102 u 104A ta' l-Att prinċipali għandu jiġu sostitwiti bil-kliem “Regolament Dwar il-Koperazzjoni u l-Protezzjoni tal-Konsumatur”.

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

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

(a) immedjatament qabel it-tifsira “Dipartiment” għandha tiżdied it-tifsira l-ġdida li ġejja:

“Bord ta’ l-Appell” tfisser Bord ta’ l-Appell għall-Affarijiet tal-Konsumatur mwaqqaf taht Taqsima XII ta’ dan l-Att”;

(b) immedjatament wara l-paragrafu (iii) fit-tifsira “konsumatur” għandu jiddied il-proviso l-ġdid li ġej:

“Izda għall-finijiet tat-Titolu I tat-Taqsima VII ta’ dan l-Att it-tifsira ta’ “konsumatur għandha tikkonsisti biss fil-paragrafu (i) iktar ‘il fuq.”

(ċ) fit-test Malti biss, fit-tifsira “pattijiet”, il-kelma “pattijiet” għandha tiġi sostitwita bil-kelma “espressjonijiet”;

(d) it-tifsira “Stat taz-ŻEE” għandha tiġi mhassra;

(e) immedjatament wara t-tifsira “servizzi” għandha tiżdied it-tifsira l-ġdida li ġejja:

““Stat Membru” tfisser Stat li huwa firmatarju għall-ftehim dwar iż-Żona Ekonomika Ewropeja ffirmat f’Oporto fit-2 ta’ Mejju 1992 kif emendat permezz tal-Protokoll iffirmat fi Brussell fis-17 ta’ Marzu 1993 u emendat b’atti sussegwenti;”

(f) it-tifsira “korp kwalifikanti” għandha tinbidel kif ġej:

“entità kwalifikata” tfisser

(a) assoċjazzjoni tal-konsumaturi registrata,

(b) korp pubbliku indipendenti, li għandu interess leġittimu f’li jiżgura l-protezzjoni ta’ l-interessi kollettivi tal-konsumaturi f’Malta jew f’kull’Stat Membru iehor li fih jeżistu dawn il-korpi,

(ċ) organizzazzjoni volontarja f’Malta kif il-Ministru, wara li jikkonsulta mal-Kunsill, jista’ jiddeżina permezz ta’ Avviż fil-Gazzetta,

(d) organizzazzjoni volontarja fi kwalsijasi Stat Membru li għandha l-ghan li thares l-interessi imsemmija fil-paragrafu (b) ta’ din it-tifsira skond il-kriterji mfassla fil-liġi nazzjonali tagħhom,

(e) kull entità kwalifikata minn Stat Membru inkluża fil-lista ta' entitajiet kwalifikati kif ippublikati fil-*Ġurnal Uffiċjali ta' l-Unjoni Ewropeja*;

(f) il-paragrafu (ii) fit-tifsira “kummerċjant” ser tkun re-numerata bhala paragrafu (iii) u ser jiżdied paragrafu (ii) ġdid, kif ġej:

“(ii) kull korp pubbliku kemm jekk korporat jew inkorporat li jipprovdi oġġetti jew servizzi lill-konsumatur għal kumpens; u”

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

**7.** Is-subparagrafu (v) tal-paragrafu (d) tas-subartikolu (7) tal-artikolu 4 ta' l-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

“(v) kull reat kriminali jew ksur mahsub f'dan l-Att, regolamenti magħmula tahtu fl-Ordinanza tad-Dwana, fl-Att dwar Deskrizzjonijiet Kummerċjali, fl-Att dwar Kuntratti fuq l-Ghatba tal-Bieb, fl-Att dwar il-Metroloġija, jew f'kull liġi mhassra minn xi wiehed mill-Atti jew Ordinanze msemmija jew b'kull liġi li tidhol minflokhom.”

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

**8.** Is-subartikolu (3) ta' l-artikolu 7 ta' l-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

“(3) Ir-regolamenti li jsiru taht dan l-artikolu jistgħu jipprovdu li kull persuna li tikser xi disposizzjoni tar-regolamenti ser jew: -

(a) tkun hatja ta' reat b'piena ta' multa li ma teċċedix l-ghoxrin elf lira (Lm20,000) (€46,587.47), jew

(b) tkun hatja ta' ksur b'piena ta' multa amministrattiva li ma teċċedix l-ghoxrin elf lira (Lm20,000) (€46,587.47) u f'kull każ pjeni differenti jistgħu jiġu preskritti għall-reati jew ksur differenti.”

Żieda ta' l-artikolu 7A ġdid ma' l-Att prinċipali.

**9.** Immedjatament wara l-artikolu 7 ta' l-Att prinċipali għandu jiżdied l-artikolu l-ġdid 7A li ġej:

“Poter li tohrog linji gwida.

7A. Id-Direttur jista' minn żmien għal żmien johrog linji gwida sabiex jipprovdi gwida ġenerali dwar l-interpretazzjoni tad-dispożizzjonijiet ta' dan l-Att.”

Emenda ta' l-artikolu 10 ta' l-Att prinċipali.

**10.** L-artikolu 10 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) id-disposizzjoni preżenti ser tiġi rinumerata bħal subartikolu (1) tiegħu;

(b) fis-subartikolu (1) tiegħu kif rinumerat, immedjatement wara l-kliem “Meta reat” għandhom jiżdedu l-kliem “jew ksur” u l-kliem “tar-reat “kull fejn jidhru fis-subartikolu ser jiġu sostitwiti bil-kliem “tar-reat jew tal-ksur”; u

(ċ) immedjatement wara s-subartikolu (1) tiegħu hekk kif rinumerat għandu jiżded is-subartikolu il-ġdid li ġej:

“(2) Fejn reat jew ksur ta’ xi dispożizzjoni ta’ dan l-Att jew regolament li jaqa’ tahtu ssir minn korp inkorporat u jiġi ppruvat li dan sar bil-kunsens jew l-involviment ta’ jew huwa attribbwi bil lil negliġenza kbira minn naħa ta’ persuna li hija direttur, *manager*, segretarja jew xi uffiċjal iehor hekk deskritt tal-korp inkorporat jew persuna li kienet qed tallega li qed taġixxi f’ tali kapacità, tista’ tittiehed azzjoni kontra dik il-persuna kif ukoll kontra l-korp inkorporat u dan jista’ jingħata piena daqs li kieku kien responsabbli għal dak ir-reat jew ksur.”

**11.** L-artikolu 12 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:

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

(a) Għas-subartikolu (1) tiegħu għandu jiġi sostitwit dan li ġej:

“(1) Mal-konklużjoni ta’ investigazzjoni, fejn jidher lid-Direttur li kummerċjant/a ikun/tkun ġab/ġabet ruħu/ha bi ksur ta’ jew nuqqas ta’ osservanza tar-regolamenti magħmula taht l-artikolu 7 jew taht id-disposizzjonijiet ta’ l-artikolu 9, jew bi ksur jew nuqqas ta’ osservanza tad-disposizzjonijiet ta’ l-artikoli 44 sa 47, 51 sa 53 jew tad-disposizzjonijiet ta’ l-Att dwar il-Kuntratti fuq l-Għatba tal-Bieb, id-Direttur jista’, fid-diskrezzjoni tiegħu/tagħha, minflok ma johroġ deċiżjoni fejn isib ksur jew jibda proċeduri kontra l-kummerċjant/a u, jew johroġ ordni ta’ tharis, jammonixxi lill-kummerċjant/a u jikseb mingħandu/ha garanzija bil-miktub li l-kummerċjant/a sa jieqaf/tieqaf milli jkompli/tkompli jġib/ġġib ruħu/ha skond ma hemm miktub fil-garanzija għal dak iż-żmien li ma jkunx iktar minn tliet snin, skond ma jiġi speċifikat mid-Direttur. 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-ghoti ta’ kumpens lill-konsumaturi milqutin.”

(b) is-subartikolu (3) tieghu ghandu jiġi imhassar;

(ċ) is-subartikoli (4) u (5) tieghu ser jiġu rinumerati bhala subartikoli (3) u (4) rispettivament; u

(d) is-subartikolu (4) tieghu hekk kif rinumerat ghandu jiġi sostitwit b'dan li ġej:

“(4) Kummerċjant/a li jikser/tikser garanzija magħmula skond dan l-artikolu ikun, minghajr preġudizzju għal xi responsabbiltà li titnissel minn din il-liġi jew xi liġi oħra, hati/ja ta'ksur kontra dan l-artikolu, u f'kull każ jibqa'/tibqa' marbut/a bil-garanzija għaż-żmien li jifdal mill-perijodu tagħha.”

Żieda ta' l-artikolu 12A ġdid ma' l-Att prinċipali.

**12.** Immedjatament wara l-artikolu 12 ta' l-Att prinċipali ghandu jiżdied l-artikolu 12A il-ġdid li ġej:

“Poter li jagħmel investigazzjonijiet.

12A. Sabiex jiżgura l-osservanza tad-disposizzjonijiet ta' dan l-Att u ta' kull regolament magħmul tahtu, id-Direttur għandu/ha jkollu/ha l-poter li jagħmel/tagħmel investigazzjonijiet minn jeddu/ha jew fuq allegazzjoni raġonevoli bil-miktub ta' ksur tad-dispożizzjonijiet ta' dan l-Att u ta' kull regolament magħmul tahtu.”

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

**13.** L-artikolu 13 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:

(a) għan-nota marginali tieghu, għandhom jiġu sostitwiti dawn il-kliem:

“Proċeduri Kriminali.” u

(b) għas-subartikolu (1) tieghu għandu jiġi sostitwit dan li ġej:

“(1) Meta investigazzjonijiet skond l-artikolu 12A ikunu marbuta ma' reat taht dan l-Att jew xi regolament magħmul tahtu, proċeduri kriminali jistgħu jiġu istitwiti fuq talba tad-Direttur biss.”

Emenda ta' l-artikolu 14 ta' l-Att prinċipali.

**14.** F'subartikolu (1) ta' l-artikolu 14 ta' l-Att prinċipali, immedjatament wara l-kliem “hati ta' reat kontra” għandhom jiżdiedu l-kliem “xi dispożizzjoni ta' l-Att”.

Żieda ta' l-artikoli 14A u 14B ġodda ma' l-Att prinċipali.

**15.** Immedjatament wara l-artikolu 14 ta' l-Att prinċipali għandhom jiżdiedu ż-żewġ artikoli l-ġodda 14A u 14B li ġejja:

“Proċeduri  
Amministrattivi.

14A. (1) Mal-bidu ta’ l-investigazzjonijiet skond l-artikolu 12A li jikkonċerna allegat ksur ta’ xi disposizzjoni ta’ dan l-Att jew ta’ regolamenti magħmula tahtu, id-Direttur għandu/ha jikteb/tikteb lill-persuna investigata u jinfurmaha/tinfurmaha bin-natura ta’ l-allegat ksur u jagħti lill-persuna kkonċernata perjodu ta’ mhux inqas minn hmistax il-ġurnata bħal mad-Direttur jista’ jiddeċiedi li huwa approprjat fiċ-ċirkustanzi. Waqt l-imsemmi perjodu, l-persuna kkonċernata tista’ tagħmel is-sottomissjonijiet tagħha lid-Direttur.

(2) Fejn, mal-konklużjoni ta’ investigazzjoni, wara li jiġu kkunsidrati s-sottomissjonijiet, jekk ikunu saru, lill taht is-subartikolu (1), jirriżulta lid-Direttur li sehh ksur ta’ disposizzjoni ta’ dan l-Att jew ta’ kull regolament magħmul tahtu, hu/hija għandu/għandha johroġ/tohroġ deċiżjoni fejn isib/issib ksur u jagħti/tagħti r-raġunijiet tiegħu/tagħha:

Iżda, minflok deċiżjoni fejn jsib ksur, id-Direttur jista’/tista’ jitlob/titlob garanzija minghand kummerċjant/a skond l-artikolu 12.

(3) Kopja tad-deċiżjoni mahruġa taht is-subartikolu (2) ser tiġi notifikata lill-persuna li kontra tagħha ttiehdet id-deċiżjoni.

Miżuri  
intermedji.

14B. (1) Minkejja d-dispożizzjonijiet ta’ l-artikolu 14A, f’każijiet ta’ urġenza minhabba r-riskju ta’ hsara immedjata u serja lill-interessi kollettivi tal-konsumaturi, id-Direttur jista’/tista’, qabel il-konklużjoni ta’ l-investigazzjoni, fuq il-bażi ta’ sejbiet *prima facie* ta’ ksur, jordna/tordna miżuri intermedji sabiex jirrimedja/tirrimedja s-sitwazzjoni qabel ma tintlahaq deċiżjoni finali, u jagħti/tagħti r-raġunijiet tiegħu/tagħha:

Iżda l-persuna li kontra tagħha tali miżuri huma mahsuba, għandha tinghata opportunità raġonevoli sabiex tagħti l-opinjoni tagħha u tipproponi xi rimedji.

(2) Miżuri mehuda taht is-subartikolu (1) ser ikollhom effett immedjat u ser jibqgħu fis-sehh għall-perjodu ta’ zmien stipulat fiha, sakemm ma jiġux revokati qabel mid-Direttur jew sakemm il-fatt li huwa taht investigazzjoni ġie deċiż mid-Direttur qabel l-imsemmi perjodu, u jista’ jiġġedded sakemm huwa mehtieg u approprjat.

(3) Ordnijiet għal miżuri intermedji skond dan l-artikolu ser ikunu notifikati lill-persuna li qegħda tiġi investigata.

(4) Kull persuna li taġixxi kontra miżura intermedja mahruġa mid-Direttur ser tkun hatja ta' ksor kontra dan l-artikolu.

(5) Persuna li ġiet notifikata b' miżura intermedja, tista' fi hmistax-il ġurnata, minn notifika tal-miżura, tappella mill-imsemmija miżura permezz ta' applikazzjoni quddiem il-Bord ta' l-Appell:

Iżda tali appell mhux ser ikollu l-effett li jissospendi l-miżuri intermedji.

(6) L-applikazzjoni ta' l-appell ser tkun notifikata lid-Direttur, li mhux aktar tard minn hmistax il-ġurnata minn tali notifika jippreżenta r-risposta tiegħu.

(7) Il-Bord ta' l-Appell jista' jikkonferma jew jirrevoka l-miżuri intermedji jew jibdilhom fir-rigward ta' kliem u kundizzjonijiet li l-Bord jista' jikkunsidra xierqa."

Emenda ta' l-artikolu 15 ta' l-Att prinċipali.

**16.** L-artikolu 15 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu il-kliem "artikoli 10, 12, 13 u 14 għandhom ukoll japplikaw għal reati li jiksru", għandhom jiġu sostitwiti bil-kliem "artikoli 10, 12, 12A, 13, 14, 14A u 14B u Taqsima X, XI u XII għandhom japplikaw ukoll għall kull reat u, jew ksor ta'" u

(b) għal subartikolu (2) għandu jiġi sostitwit dan li ġej:

"(2) Id-dispożizzjonijiet ta' l-artikoli 10, 12, 12A, 13, 14, 14A u 14B u t-Taqsimiet X, XI u XII għandhom japplikaw għall-reati u, jew ksor taht il-liġijiet imsemmija fl-artikolu 111."

Emenda ta' l-artikolu 17 ta' l-Att prinċipali.

**17.** Għall-paragrafu (d) tas-subartikolu (3) ta' l-artikolu 17 ta' l-Att prinċipali għandu jiġi sostitwit dan li ġej:

"(d) "tkun instabet hatja ta' xi offiża jew xi ksor imsemmi fis-subparagrafu (v) ta' l-artikolu 4(7)(d)."



**18.** Fis-subartikolu (2) ta' l-artikolu 36 ta' l-Att prinċipali il-kliem “skond l-artikolu 7(1)(b)”. għandhom jiġu sostitwiti bil-kliem “skond l-Artikolu 7(1)(b)”. Emenda ta' l-artikolu 36 ta' l-Att prinċipali.

**19.** Fil-paragrafu (g) ta' l-artikolu 41 ta' l-Att prinċipali, il-kliem “taht l-artikolu 7(1)(c)”, għandhom jiġu sostitwiti bil-kliem “taht l-artikolu 7(1)(b)”. Emenda ta' l-artikolu 41 ta' l-Att prinċipali

**20.** It-titolu għat-Taqsima VI ta' l-Att prinċipali għandu jiġi sostitwit bit-titolu ġdid li ġej “Klawżoli mhux ġusti f'kuntratti”. Sostituzzjoni tat-titolu għat-Taqsima VI ta' l-Att prinċipali.

**21.** Fl-artikolu 45 ta' l-Att prinċipali immedjatement wara it-tmiem tas-subartikolu (2) tiegħu, għandu jiżdied il-proviso l-ġdid li ġej: Emenda ta' l-artikolu 45 ta' l-Att prinċipali.

“Iżda safejn hi miktuba b'lingwa kif ordinarjament mitkellma u intelligibli li tista' tiftiehem, l-evalwazzjoni jekk espressjoni hijjeh ġusta mhux ser tkun tirrelata -

(a) mat-tifsira ta' l-oġġett prinċipali tal-kuntratt, jew

(b) ma' l-adegwatezza tal-prezz jew renumerazzjoni, meta mqabbla ma' l-oġġetti jew is-servizzi pprovduti għaliha.”

**22.** Immedjatement wara l-artikolu 47 ta' l-Att prinċipali, għandhom jiżdiedu tliet artikoli ġodda 47A, 47B u 47C kif ġej: Żieda ta' l-artikoli 47A sa 47C ġodda ma' l-Att prinċipali.

“47A. Protezzjoni fil-każ ta' espressjoni li japplika liġi ta' pajjiż li mhuwiex Membru.

Id-disposizzjonijiet ta' din it-Taqsima għandhom japplikaw minkejja kull espressjoni f'kuntratt mal-konsumatur li tapplika jew tallega li tapplika l-liġi ta' Stat li mhux Membru, jekk il-kuntratt għandu rabta mill-qrib mat-territorju ta' xi Stat Membru.

47B. Applikabilità fuq liġijiet oħra.

Id-disposizzjonijiet ta' din it-Taqsima għandhom jipprevalu fuq kull disposizzjoni kuntrarja li fihom il-Kodiċi Ċivili u l-Kodiċi tal-Kummerċ.

47C. L-għan ta' din it-Taqsima.

L-għan ta' din it-Taqsima huwa dak li jimplimenta d-dispożizzjonijiet tad-Direttiva tal-Kunsill 93/13 tal-5 ta' April

1993 dwar klawżoli ingusti f'kuntratti mal-konsumatur u d-disposizzjonijiet ta' din it-Taqsima għandhom jiġu applikati u interpretati b'dan il-mod.”

Renumerazzjoni tat-Taqsimiet VII, VIII, IX, X u XI ta' l-Att prinċipali.

**23.** It-Taqsima VII ta' l-Att prinċipali bit-titolu “Responsabbiltà għal prodotti difettużi”, it-Taqsima VIII ta' l-Att prinċipali bit-titolu “Bejgħ ta' oġġetti lil konsumaturi”, it-Taqsima IX ta' l-Att prinċipali imsemmija “Ordni jiet ta' tharis”, it-Taqsima X ta' l-Att prinċipali imsemmija “Infurzar” u it-Taqsima XI ta' l-Att prinċipali imsemmija “Mixxellanji” ser jiġu renumerati bhala Taqsimiet VIII, IX, X, XI u XIII rispettivament u kull referenza għall dawn it-Taqsimiet, kif kienu qabel ma ġew renumerati f'kull leġislazzjoni, mit-12 ta' Diembru 2007, ser jinftthemu bhala referenzi għat-Taqsimiet kif renumerati.

Żieda ta' taqsima u sub-taqsima ġodda ma' l-Att prinċipali.

**24.** Immedjatament wara l-artikolu ġdid 47C ta' l-Att prinċipali, għandha tiżdied it-taqsima u s-sub-taqsima kif ġej:

## “TAQSIMA VII

### Prattiċi kummerċjali mhux ġusti u skemi illeċiti

#### Titolu I

#### Prattiċi kummerċjali mhux ġusti

Thassir ta' l-Artikoli 48 sa 51 ta' l-Att prinċipali.

**25.** L-artikoli 48, 49, 50 u 51 ta' l-Att prinċipali għandhom jiġthassru.

Żieda ta' l-Artikoli ġodda 51A sa 51J ta' l-Att prinċipali.

**26.** Immedjatament wara l-Artikolu 51 mhassar ta' l-Att prinċipali, għandhom jiżdiedu l-artikoli ġodda 51A sa 51J kif ġej:

“Interpretazzjoni. 51A. F'dan it-Titolu, sakemm il-kuntest ma jitlobx mod ieħor:

“deċiżjoni transazzjonali” tfisser kwalunkwe deċiżjoni mehuda minn konsumatur dwar jekk, kif u taht liema kondizzjonijiet –

(i) jixtri prodott, jew

(ii) ihallas il-prezz shiħ jew parti mill-prezz ta' prodott, jew

(iii) iżomm jew jiddisponi minn prodott, jew

(iv) jeżerita xi dritt kontrattwali fir-rigward tal-prodott, kemm jekk il-konsumatur jiddeciedi li jiehu jew ma jihux xi azzjoni;

“diligenza professjonali” tfisser l-istandard ta’ senġha u kura li kummerċjant huwa raġonevolment mistenni li jeżerċita fir-rigward ta’ konsumaturi, proporzjonat ma’ Prattika onesta fis-suq u, jew mal-prinċipju ġenerali tal-*bona fide* fil-qasam ta’ attività tal-kummerċjant;

“disposizzjonijiet amministrattivi” tfisser kull disposizzjoni f’ miżura mahruġa minn kull Ministeru tal-Gvern jew dipartiment, awtorità lokali jew kull korp pubbliku li jorbot lin-nies li jindirizza, inkluż kull ordni liċenzja permess, *warrant* jew deċiżjoni;

“il-holqien ta’ distorsjoni sostanzjali fl-imġieba ekonomika ta’ konsumaturi” tfisser l-użu ta’ Prattika kummerċjali sabiex tiġi mfixkla b’mod apprezzabbli l-kapaċità tal-konsumatur li jagħmel deċiżjoni infurmata, jew imġieghel jiehu deċiżjoni transazzjonali li ma kienu jiehu f’ ċirkostanzi ohra;

“influenza mhux xierqa” tfisser l-isfruttament ta’ pożizzjoni ta’ poter fil-konfront tal-konsumatur sabiex tiġi applikata pressjoni fuqu, anke mingħajr l-użu jew it-theddid ta’ l-użu tal-forza fiżika, b’mod li jillimita sostanzjalment il-kapaċità tal-konsumatur li jiehu deċiżjoni infurmata;

“kodiċi ta’ kondotta” tfisser kull ftehim jew sett ta’ regoli mhux imposti b’liġi, regolament jew disposizzjoni amministrattiva li jfissru l-imġieba ta’ kummerċjanti li jassumu l-obbligu li josservaw il-kodiċi fejn għandhom x’jaqsmu wahda jew iktar prattiċi kummerċjali partikolari jew setturi ta’ negozju;

“prattiċi kummerċjali” tfisser kwalunkwe att, ommissjoni, imġieba jew rappreżentazzjoni, komunikazzjoni kummerċjali inklużi reklamar u kummerċjalizzazzjoni, minn kummerċjant, konnessi direttament mal-promozzjoni jew bejgħ jew forniture ta’ xi prodott lill-konsumaturi kemm jekk isehh qabel, waqt jew wara t-transazzjoni kummerċjali in relazzjoni mal-prodott;

“prodott” tfisser kull merkanzija jew servizz inkluża proprjetà immobbli, drittijiet u obbligi;

“professjoni regolata u attività professjonali regolata” ghandha l-istess tifsira bhal dik moghtija fl-Att dwar ir-Rikonoxximent Reċiproku ta’ Kwalifiki, Kap. 451.

“sid ta’ kodiċi” tfisser kwalunkwe entità, inkluż kummerċjant jew grupp ta’ kummerċjanti, responsabbli mit-tfassil u r-reviżjoni ta’ kodiċi ta’ kondotta u/jew mill-monitoraġġ tal-konformità mal-kodiċi minn dawk li assumew l-obbligu li josservawh;

“stedina għax-xiri” tfisser komunikazzjoni kummerċjali li tindika karatteristiċi tal-prodott u l-prezz f’mod adegwat għall-mezzi ta’ komunikazzjoni kummerċjali li ntużaw, li hija tali li twassal lil konsumatur li jagħmel ix-xiri.

Prattiċi  
kummerċjali  
mhux ġusti.

51B. (1) Il-prattiċi kummerċjali mhux ġusti għandhom ikunu projbiti.

(2) Prattika kummerċjali tkun mhux ġusta jekk:

(a) tmur kontra l-htigijiet tad-diligenza professjonali, u

(b) tohloq distorsjoni sostanzjali jew tista’ tohloq distorsjoni sostanzjali fl-imġieba ekonomika, fir-rigward tal-prodott, tal-konsumatur medju li tilhaq jew li lili tkun indirizzata, jew tal-membru medju tal-grupp meta xi prattika kummerċjali tkun diretta lejn grupp partikolari ta’ konsumaturi;

Iżda, barra minn prattiċi ta’ reklamar ta’ stqarrijiet eżagerati jew stqarrijiet li mhumiex intiżi sabiex jittiehdu litteralment, prattiċi kummerċjali li x’aktarx joħolqu distorsjoni sostanzjali fl-imġieba ekonomika biss ta’ grupp identifikabbli b’mod ċar ta’ konsumaturi li huma partikolarment vulnerabbli għall-prattika jew għall-prodott li għalih din tirreferi minhabba l-mard mentali jew fiżiku, l-età jew il-kredulità tagħhom b’mod li l-kummerċjant jista’ raġonevolment ikun mistenni li jipprevedi, għandhom jiġu eżaminati mill-perspettiva ta’ membru medju ta’ dak il-grupp.

(3) B'mod partikolari, tkun mhux ġusta, prattika kummerċjali li tqarraq kif stabbilit fl-artikoli 51C u 51D, jew aggressiva skond it-termini ta' l-artikolu 51E.

(4) dawk il-prattiċi kummerċjali imniżżla fl-Ewwel Skeda ghandhom f'kull ċirkostanza jitqiesu bħala mhux ġusti.

Azzjonijiet  
qarrieqa.

51C. Prattika kummerċjali ghandha titqies bħala qarrieqa jekk:

(a) ikun fiha taghrif falz; jew

(b) b'xi mod, anki bil-preżentazzjoni totali tagħha, tqarraq bil-konsumatur medju, anke jekk it-taghrif ikun korrett fattwalment, fir-rigward ta' wiehed jew iktar mill-elementi li ġejjin, u li f'kull każ iġġieghlu jew x'aktarx iġġieghlu jiehu deċiżjoni transazzjonali li ma kienx jiehu f'ċirkostanzi oħra:

(i) l-eżistenza jew in-natura tal-prodott;

(ii) il-karatteristiċi ewlenin tal-prodott, bħad-disponibbiltà, il-benefiċċji, ir-riskji, l-eżekuzzjoni, il-kompożizzjoni, l-aċċessorji, l-assistenza ta' wara l-bejgħ għall-konsumatur u t-trattament ta' ilmenti, il-metodi u d-data ta' manifattura jew tal-provvista, il-kunsinna, l-idoneità għall-ghan, l-użu, il-kwantità, l-ispeċifikazzjoni, l-orijini ġeografika jew kummerċjali jew ir-riżultati li wiehed jistenna mill-użu tiegħu, jew ir-riżultati u l-karatteristiċi importanti ta' eżamijiet jew kontrolli magħmula tal-prodott;

(iii) il-firxa ta' l-impenji min-naħa tal-kummerċjant/a, l-ghanijiet għall-prattika kummerċjali u n-natura tal-proċess tal-bejgħ, kwalunkwe stqarrija jew simbolu fir-rigward ta' sponsorizzazzjoni diretta jew indiretta jew approvazzjoni tal-kummerċjant/a jew tal-prodott;

(iv) il-prezz jew il-mod kif il-prezz huwa kalkolat, jew l-eżistenza ta' vantaġġ speċifiku fil-prezz;

(v) il-bżonn ta' servizz, parti, sostituzzjoni jew tiswija;

(vi) in-natura, l-attributi u d-drittijiet tal-kummerċjant jew ta' l-aġent tiegħu, bhall-identità u l-assi tiegħu, il-kwalifiki, l-istatus, l-approvazzjoni, l-affiljazzjoni jew il-konnessjonijiet tiegħu u d-drittijiet tiegħu fuq proprjetà industrijali, kummerċjali jew intellettuali jew il-premji li nġhata u r-rikonoxximenti mogħtija lilu;

(vii) id-drittijiet tal-konsumatur, inkluż id-dritt ta' tiswija tibdil jew rimborż skond it-Taqsima IX ta' l-Att, jew ir-riskji li jista' jiffaċċa; jew

(ċ) fil-kuntest fattwali tagħha, b'kont meħud tal-karatteristiċi u ċ-ċirkostanzi kollha tagħha, hija tikkawża jew x'aktarx tikkawża li l-konsumatur medju jieħu deċiżjoni transazzjonali li ma kienx jieħu f'ċirkostanzi oħra, u tinvolvi:

(i) kwalunkwe kummerċjalizzazzjoni ta' prodott, inkluż reklamar komparattiv, li jgħoq konfużjoni bejn kwalunkwe prodotti, trade marks, ismijiet kummerċjali u marki oħrajn distintivi ta' kompetitur; jew

(ii) nuqqas ta' konformità mill-kummerċjant ma' l-impenji kontenuti f'dawk il-kodiċijiet ta' kondotta li fuqhom il-kummerċjant impenja ruħu li jirregola lilu nnifsu, fejn (a) l-impenn mhux wieħed li jaspira iżda huwa sod u li jista' jiġi verifikat, u (b) il-kummerċjant jindika fi prattika kummerċjali li huwa marbut mill-kodiċi.

Omissjonijiet 51D. (1) Prattika kummerċjali għandha titqies bħala qarrieqa jekk:  
Qarrieqa.

(a) fil-kuntest fattwali tagħha, b'kont meħud tal-karatteristiċi u ċ-ċirkostanzi kollha tagħha u tal-limitazzjonijiet tal-mezz ta' komunikazzjoni, tħalli barra tagħrif importanti li l-konsumatur medju għandu bżonn, skond il-kuntest, sabiex jieħu deċiżjoni transazzjonali informata u għaldaqstant tikkawża li l-konsumatur medju jieħu deċiżjoni transazzjonali li ma kienx jieħu f'ċirkostanzi oħra;

jew

(b) ikkunsidrati l-fatti deskritti fil-paragrafu (a), kummerċjant jahbi jew jipprovdi b' manjiera mhux ċara, mhux intelligibbli, ambigwa u/jew mhux f' waqtha, dak it-tagħrif importanti msemmi f'dak il-paragrafu, jew jonqos milli jidentifika l-intenzjoni kummerċjali wara l-prattika kummerċjali jekk din ma tkunx diġà apparenti mill-kuntest u fejn, f'kull każ din tikkawża jew x'aktarx tikkawża li l-konsumatur medju jiehu deċiżjoni transazzjonali li ma kienx jiehu f'ċirkostanzi oħra.

(2) Fejn il-mezz użat sabiex tiġi kkomunikata l-prattika kummerċjali jimponi limitazzjonijiet ta' spazju jew ta' żmien, għandu jittiehed kont ta' dawn il-limitazzjonijiet u ta' kull miżura mehuda mill-kummerċjant sabiex jagħmel it-tagħrif disponibbli għall-konsumaturi permezz ta' mezzi oħra meta jiġi deċiż jekk xi tagħrif thalliex barra.

(3) F'każ ta' stedina għax-xiri, it-tagħrif li ġej għandu jitqies bħala importanti, jekk ma jkunx diġà apparenti mill-kuntest:

(a) il-karatteristiċi ewlenin tal-prodott, safejn xieraq għall-mezz u l-prodott;

(b) l-indirizz ġeografiku u l-identità tal-kummerċjant/a, bhall-isem kummerċjali tiegħu/tagħha u, fejn ikun applikabbli, l-indirizz ġeografiku u l-identità tal-kummerċjant/a li f'ismu qieghed jaġixxi;

(ċ) il-prezz inklużi t-taxxi, jew fejn in-natura tal-prodott tfisser li l-prezz ma jistax b' mod raġonevoli jiġi kalkolat minn qabel, il-mod li bih il-prezz hu kalkolat, kif ukoll, fejn ikun xieraq, kull ammont ta' hlas addizzjonali għat-trasport ta' merkanzija, hlas ta' kunsinna jew hlas postali jew, fejn dawn l-ammonti ta' hlas ma jistghux jiġu raġonevolment kalkolati minn qabel, il-fatt li tali ammonti ta' hlas addizzjonali jistghu jkunu dovuti;

(d) l-arranġamenti għall-hlas, il-kunsinna, l-eżekuzzjoni u għat-trattament ta' l-ilmenti, jekk dawn ma jikkonformawx mal-htigijiet tad-diligenza professjonali;

(e) għal prodotti u transazzjonijiet li jinvolvu d-dritt ta' rtirar jew ta' kancellazzjoni, l-eżistenza ta' dan id-dritt.

(4) Il-htigijiet ta' tagħrif stabbiliti mill-liġi fir-rigward ta' komunikazzjonijiet kummerċjali nkluzi r-reklamar jew il-kummerċjalizzazzjoni jitqiesu bhala importanti.

Prattici  
kummerċjali  
aggressivi.

51E. (1) Prattika kummerċjali għandha titqies bhala aggressiva jekk, fil-kuntest fattwali tagħha, b'kont mehud tal-karatteristiċi u ċ-ċirkostanzi kollha tagħha, permezz ta' fastidju, kostrizzjoni, inkluż l-użu tal-forza fiżika, jew ta' influwenza mhux xierqa, tfixkel b'mod sinifikanti jew x'aktarx tfixkel konsiderevolment il-libertà ta' l-għażla jew l-imġieba tal-konsumatur medju fir-rigward tal-prodott u b'hekk tikkawża jew x'aktarx tikkawża li huwa jiehu deċiżjoni transazzjonali li ma kienx jiehu f'ċirkostanzi ohra.

(2) Fid-determinazzjoni jekk prattika kummerċjali tużax il-fastidju, il-kostrizzjoni, inkluż l-użu tal-forza fiżika, jew l-influwenza mhux xierqa, għandu jittiehed kont ta' dawn li'gejjin:

(a) iż-żmien, il-lok, in-natura u l-persistenza tagħha;

(b) l-użu tal-lingwaġġ użat jew l-imġieba ta' theddid jew abbużiv;

(ċ) l-isfruttament mill-kummerċjant ta' kwalunkwe sfortuna jew ċirkostanza speċifika ta' tali gravità li tfixkel il-ġudizzju tal-konsumatur, li biha l-kummerċjant ikun jaf, sabiex jinfluwenza d-deċiżjoni tal-konsumatur fir-rigward tal-prodott;

(d) kwalunkwe ostakli mhux kontrattwali, onerużi jew sproporzjonati imposti mill-kummerċjant fejn konsumatur ikun jixtieq jeżerċita xi drittijiet mogħtija fil-kuntratt, inklużi d-drittijiet tat-thassir tal-kuntratt jew tal-bidla għal prodott iehor jew għal kummerċjant iehor;

(e) kwalunkwe theddida li tittiehed jew kull azzjoni li legalment ma tistax tittiehed.



- Ksur. 51F. Persuna li taghmel prattiċi kummerċjali mhux ġusti skond l-artikoli 51B, 51C, 51D u 51E, tkun hatja ta' ksur kontra dan l-Att.
- Kontroll mis-sidien ta' kodiċijiet. 51G. (1) Id-disposizzjonijiet ta' dan it-Titolu ma jipprekludux kontroll ta' prattiċi kummerċjali mhux ġusti mis-sidien ta' kodiċijiet permezz ta' kodiċijiet ta' kondotta.
- (2) Appell lis-sidien tal-kodiċijiet sabiex jiżguraw qbil ma' dawn il-kodiċijiet ta' kondotta mhux ser jippreġudikaw xi forma oħra ta' rimedju li jeżisti taht dan l-Att jew xi liġi oħra.
- Esklużjoni. 51H. Id-disposizzjonijiet ta' dan it-Titolu mhux ser japplikaw għal xi liġi oħra li tirrelata maċ-ċertifikazzjoni u l-indikazzjoni ta' l-istandard ta' finezza ta' artikli ta' metall prezzjuż.
- Skop. 51I. Id-disposizzjonijiet ta' dan it-Titolu huma mingħajr preġudizzju għal:
- (a) kull dispożizzjoni taht il-liġi Maltija li tirregola kuntratti b'mod partikolari dawk li jirregolaw il-validità, il-formazzjoni jew l-effett tagħhom;
- (b) kull regola konnessa ma' aspetti ta' saħħa u sigurtà ta' prodotti;
- (ċ) kull dispożizzjoni taht il-liġi Maltija li timplimenta Direttiva Komunitarja jew kull dispożizzjoni taht il-liġi Komunitarja li tirregola aspetti speċifiċi ta' prattiċi kummerċjali iġusti, safejn dawk l-aspetti speċifiċi huma kkonċernati;
- (d) kull kundizzjoni ta' stabbiliment jew reġimi ta' awtorizzazzjoni, jew għall-kodiċi deontoloġiku ta' kondotta jew regoli speċifiċi oħra li jiggvernaw professjonijiet regolati sabiex jinżammu livelli għolja ta' integrità min-naha tal-professjonisti;
- (e) kull rekwiżit ta' xi liġi oħra fil-qasam tas-servizzi finanzjarji u tal-proprjetà immobbli, li huma iktar restrittivi jew preskrittivi mir-rekwiżiti imposti mid-dispożizzjonijiet ta' dan it-Titolu.

Għan ta' dan it-Titolu.

51J. L-għan ta' dan it-Titolu huwa dak li jimplementa d-Direttiva 2005/29 tal-Parlament Ewropew u tal-Kunsill tal-11 ta' Mejju 2005 dwar prattiċi kummerċjali żleali fin-negozju mal-konsumatur fis-suq intern u d-dispożizzjonijiet ta' dan it-Titolu għandhom jiġu applikati u interpretati bl-istess mod."

Żieda ta' subtitolu ġdid ta' l-Att prinċipali.

**27.** Immedjatament wara l-Artikolu 51J il-ġdid, għandu jidher is-subtitolu ġdid li ġej:

**“Titolu II  
Skemi illeċiti”.**

Thassir ta' l-Artikolu 52 ta' l-Att prinċipali.  
Żieda ta' l-Artikolu 52A ġdid fl-Att prinċipali.

**28.** L-Artikolu 52 ta' l-Att prinċipali għandu jithassar.

**29.** Immedjatament wara l-Artikolu 52 mhassar ta' l-Att prinċipali, għandu jidher l-Artikolu 52A ġdid li ġej:

“Skemi ta' *“chain letters”*.

52A. (1) Kull skema ta' tip simili għal skema ta' *chain letter*, li mhix marbuta ma' provvista ta' oġġetti jew servizzi, li tkun waħda mhux ġusta għal bosta mill-parteciċipanti fl-iskema għandha tkun projbita.

(2) Skema tkun ingusta jekk:

(i) il-premjijiet finanzjarji tal-maġġoranza tal-parteciċipanti huma dipendenti fuq l-ingaġġ ta' parteciċipanti addizzjonali; u

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

(3) Min jistabbilixxi, iħaddem jew iġib 'il quddiem xi skema skond dan l-artikolu jkun hati ta' ksur kontra dan l-artikolu.”

Emenda ta' l-artikolu 53 ta' l-Att prinċipali.

**30.** L-artikolu 53 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu l-kliem “Min jagħmel xi dikjarazzjoni li tkun falza jew qarrieqa f'xi dettall materjali dwar il-profittabilità jew ir-riskju jew xi aspett materjali iehor ta' xi skema ta' xogħol domestiku jew skemi jew attivitajiet simili ohra, jkunu kif ikunu deskritti” għandhom jiġu sostitwiti bil-kliem “Mingħajr preġudizzju għad-dispożizzjonijiet tat-Titolu 1 ta' din

it-Taqsima, persuna li taghmel xi dikjarazzjoni li tkun falza jew qarrieqa fi grad rilevanti li tikkonċerna l-profitt jew ir-riskju jew xi aspekk materjali jew kwalunkwe skema ta' xoghol mid-dar jew kwalunkwe skema simili jew attività indipendentement minn kif inhi deskritta,” u għall-kliem “jkun hati ta' reat”, għandhom jkunu sostitwiti bil-kliem “tkun hatja ta' ksur”; u

(b) fis-subartikolu (2) tiegħu, għall-kliem “falza jew qarrieqa f' xi dettall materjali, jkun hati ta' reat”, għandhom jiġu sostitwiti l-kliem “falza jew qarrieqa fi grad rilevanti għandu jkun hati ta' ksur”.

**31.** L-artikolu 54 ta' l-Att prinċipali għandu ikun imhassar.

Thassir ta' l-artikolu 54 ta' l-Att prinċipali.

**32.** Fl-artikolu 55 ta' l-Att prinċipali, il-kliem “il-Kodiċi Ċivili,” għandhom jiġu mhassra.

Emenda ta' l-artikolu 55 ta' l-Att prinċipali.

**33.** Immedjatament wara l-artikolu 55 ta' l-Att prinċipali għandu jiżdied l-artikolu l-ġdid 55A li ġej:

Żieda ta' l-artikolu 55A ġdid ma' l-Att prinċipali.

“Disposizzjoni tranżitorja.

55A. (1) Id-disposizzjonijiet ta' l-artikoli 48 sa 53 kif kienu qabel it-12 ta' Diċembru 2007 jitqiesu li baqghu fis-sehh għall-fini ta' kwalunkwe prosekuzzjoni li bdiet ai termini ta' l-imsemmija disposizzjonijiet qabel l-imsemmija data.

(2) Fejn att li jikser l-artikoli 48 sa 53 kif kienu qabel it-12 ta' Diċembru 2007 sar qabel l-imsemmija data imma ma inbdiet l-ebda prosekuzzjoni sa l-imsemmija data, id-disposizzjonijiet ta' din it-Taqsima hekk kif fis-sehh mit-12 ta' Diċembru 2007 għandhom japplikaw, daqs li kieku dan il-fatt sehh wara l-imsemmija data.”

**34.** Fl-artikolu 56 ta' l-Att prinċipali għall-kliem “Stat taż-ŻEE” kull fejn jidhru għandhom jidhlu l-kliem “Stat Membru”.

Emenda ta' l-artikolu 56 ta' l-Att prinċipali.

**35.** Fl-artikolu 71 ta' l-Att prinċipali għall-kliem “f' xi Stat taż-ŻEE” għandhom jiġu sostitwiti bil-kliem “f' xi Stat Membru”.

Emenda ta' l-artikolu 71 ta' l-Att prinċipali.

**36.** Fit-tifsira ta' “produttur” fis-subartikolu (1) ta' l-artikolu 72 ta' l-Att prinċipali flok il-kelma “Malta” għandhom jidhlu l-kliem “Stat Membru”.

Emenda ta' l-artikolu 72 ta' l-Att prinċipali.

**37.** Is-subartikolu (2) ta' l-artikolu 85 ta' l-Att prinċipali jithassar u s-subartikolu kurrenti (1) għandu jiġi rinumerat bhala l-artikolu 85.

Emenda ta' l-artikolu 85 ta' l-Att prinċipali.

Žieda ta' l-artikoli 93A u 93B godda ma' l-Att prinċipali.

**38.** Immedjatament wara l-artikolu 93 ta' l-Att prinċipali għandhom jiżiedu ż-żewġ artikoli l-godda li ġejjin 93A u 93B:

“Protezzjoni fil-każ ta' kuntratt li japplika l-liġi ta' Stat li m'huwiex Membru.

93A. Id-disposizzjonijiet ta' din it-Taqsima għandhom japplikaw minkejja kull klawżola f'kuntratt ta' bejgħ ta' oġġetti lill-konsumatur li japplika jew jallega li japplika l-liġi ta' *Stat li m'huwiex Membru*, jekk il-kuntratt intlaħaq jew għandu konnessjonijiet mill-qrib mat-territorju ta' Stat Membru jew tali pajjiż iehor jew grupp ta' pajjiżi bħal ma l-Ministru jista' minn żmien għall-iehor jagħżel għal l-għan ta' din id-dispożizzjoni permezz ta' nota ippubblikata fil-Gazzetta.

Għan ta' din it-Taqsima.

93B. L-għan ta' din it-Taqsima huwa dak li jimplimenta d-disposizzjonijiet tad-Direttiva 1999/44/EC dwar ċerti aspetti tal-bejgħ ta' oġġetti tal-konsum u garanziji assoċjati magħhom u d-disposizzjonijiet ta' din it-Taqsima għandhom ikunu applikati u interpretati b'dan il-mod.”

Emenda ta' l-artikolu 94 ta' l-Att prinċipali.

**39.** L-artikolu 94 ta' l-Att prinċipali għandu jkun emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, għall-kliem “sew b'inizjattiva tiegħu nnifsu jew wara li ssirlu talba bil-miktub minn korp kwalifikanti,” għandhom jidhlu l-kliem “sew jekk ikunx jew le fl-istess żmien ma' deċiżjoni li ssib ksur taht l-artikolu 14A, b'inizjattiva tiegħu nnifsu jew wara li ssirlu talba bil-miktub minn korp kwalifikanti,”;

(b) għal paragrafu (b) tas-subartikolu (1) tiegħu, għandu jiġi sostitwit dan li ġej:

“(b) fejn jehtieg lil xi persuna involuta jew tipproponi li tinvolvi ruhha fi kwalunkwe Prattika kummerċjali li mhux ġusta biex ma tkomplix għaddejja jew tieqaf minn dik il-Prattika u, jew li tiegħu kwalunkwe miżura speċifikata fl-ordni ta' tharis, inkluża dikjarazzjoni korrettiva fiż-żmien speċifikat fih sabiex jiġi żgurat li d-disposizzjonijiet tat-Taqsima VII ta' dan l-Att jiġu osservati”;

(ċ) fil-paragrafu (ċ) tas-subartikolu (1) tiegħu, immedjatament wara l-kliem “jehtieg lil xi persuna li tiegħu dawk il-miżuri speċifikati fl-ordni ta' tharis,” għandhom jidhlu l-kliem “inkluża dikjarazzjoni korrettiva,”;

(d) fil-paragrafu (d) tas-subartikolu 1 tieghu, immedjatament wara l-kliem “twettaq xi reat”, ghandhom jizdiedu l-kliem “jew ksur”;

(e) is-subartikoli (2), (3) u (4) tieghu ghandhom jigu rinumerati bhala subartikoli (5), (6) u (7) rispettivament.

(f) immedjatament wara is-subartikolu (1) tieghu, ghandhom jidhlu dawn is-subartikoli godda kif ġej:

“(2) L-entità kwalifikata li titlob ordni ta’ tharis skond is-subartikolu (1) trid tissodisfa d-Direttur li approvat tikseb it-tmiem tal-ksur b’konsultazzjoni jew mal-konvenut wahdu jew mal-konvenut u entità kwalifikata ohra u li t-tmiem ma nkisibx fi żmien ġimghatejn mit-talba għat-tmiem.

(3) Fejn entità kwalifikata hija minn Stat Membru iehor, id-Direttur għandu jittratta l-lista ta’ entitajiet kwalifikati ppubblikata mill-Kummissjoni Ewropeja bhala evidenza konklussiva tal-kapaċità legali ta’ l-entità legali li tippreżenta tali applikazzjoni bil-miktub f’Malta.

(4) Fejn l-entità kwalifikata hija minn Malta u tali entità mhix inkluża fil-lista ta’ entitajiet kwalifikati ppubblikati mill-Kummissjoni Ewropeja, id-Direttur fuq talba ta’ l-entità kwalifikata kkonċernata, għandu jikkomunika lill-Kummissjoni Ewropeja l-isem u l-oġġetti ta’ tali entità u li tali entità kwalifikata għandha tiżdied mal-lista ta’ entitajiet kwalifikati sabiex jiffaċilita r-rimedju ta’ ksur Intrakomunitarji.”;

(g) is-subartikolu (5) tieghu kif renumerat għandu jigi emendat kif ġej:

(i) fil-paragrafu (b) tieghu għall-kliem “informazzjoni rigward id-dritt li tinbeda kawża quddiem il-qorti” ghandhom jidhlu l-kliem “informazzjoni rigward id-dritt li tiġi ppreżentata applikazzjoni quddiem il-bord ta’ l-Appell”;

(ii) fil-paragrafu (c) tieghu, għall-kliem “korp kwalifikanti” ghandhom jidhlu l-kliem “entità kwalifikata”;

(iii) Immedjatament wara l-paragrafu (c) tieghu, għandu jizdied il-paragrafu l-ġdid li ġej:

“(d) jinnotifika l-persuna, kontra min sar l-ordni, nuqqas ta’ osservanza ta’ l-ordni jista’ jwassal għall-impożizzjoni ta’ multa amministrattiva.”;

(h) fis-subartikolu (7) tiegħu hekk kif renumerat, għall-kliem “korp kwalifikanti” għandhom jidhlu l-kliem “entità kwalifikata”;  
u

(i) immedjatament wara s-subartikolu (7) tiegħu kif renumerat, għandu jiżdied is-subartikolu l-ġdid li ġej:

“(8) Kull persuna li tonqos milli tobdi ordni ta’ tharis mahruġ mid-Direttur għandu jkun hati ta’ ksur kontra dan l-Artikolu.”

Emenda ta’ l-artikolu 95 ta’ l-Att prinċipali.

**40.** L-artikolu 95 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:

(a) għall-kliem “korp kwalifikanti” kull fejn jidhru, għandhom jidhlu l-kliem “entità kwalifikata”; u

(b) fis-subartikolu (3) tiegħu, għall-kliem “jibda’ kawża quddiem il-Qorti tal-Maġistrati fil-ġurisdizzjoni Ċivili tagħha”, għandhom jidhlu l-kliem “jippreżenta applikazzjoni quddiem il-Bord ta’ l-Appell”.

Emenda ta’ l-artikolu 97 ta’ l-Att prinċipali.

**41.** L-artikolu 97 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:

(a) Fis-subartikolu (1) tiegħu, għall-kliem “fi żmien hmistax-il ġurnata minn meta jiġi notifikat bl-ordni ta’ tharis, tibda’ kawża quddiem il-Qorti tal-Maġistrati fil-ġurisdizzjoni Ċivili tagħhom għal revoka ta’ l-ordni ta’ tharis” għandhom jiġu sostitwiti l-kliem “fi żmien hmistax-il ġurnata minn notifika ta’ l-ordni ta’ tharis, tappella mill-imsemmi ordni permezz ta’ applikazzjoni preżentata quddiem il-Bord ta’ l-Appell għar-revoka jew emenda ta’ l-ordni ta’ tharis”;

(b) Flok is-subartikolu (2) għandu jidhol dan li ġej:

“(2) Il-Bord ta’ l-Appell jista’ jikkonferma, jew iħassar l-ordni ta’ tharis b’kull terminu jew kondizzjoni li l-Bord jqis xieraq.”

(ċ) Fis-subartikolu (3) tiegħu għall-kliem “Meta kawża tinbeda”, għandhom jidhlu l-kliem “Meta appell jiġi ppreżentat” u għall-kliem “qorti” kull fejn jidhru fis-subartikolu għandhom jidhlu il-kliem “Bord ta’ l-Appell”; u

(d) Fis-subartikolu (4) tieghu għall-kliem “tista’ ma tibdiex kawża quddiem il-qorti” għandhom jidhlu l-kliem “tista’ ma tippreżentax appell quddiem il-Bord ta’ l-Appell”.

**42.** Għall-artikolu 98 ta’ l-Att prinċipali għandu jidhol dan li ġej

Sostituzzjoni ta’ l-artikolu 98 ta’ l-Att prinċipali.

“L-appelli jinstemghu u jiġu deċiżi b’urgenza.

98. Appelli ppreżentati taht l-artikolu 95 u 97 għandhom jinstemghu u jiġu deċiżi mill-Bord ta’ l-Appell b’urgenza u bl-iktar mod speditiv possibbli.”

**43.** Għall-artikolu 101 ta’ l-Att prinċipali għandu jidhol dan li ġej:

Sostituzzjoni ta’ l-artikolu 101 ta’ l-Att prinċipali.

“101. (1) Id-Direttur jista’, sabiex jelimina jew inaqqas l-effetti kontinwi ta’ non-konformità ma’ xi disposizzjonijiet ta’ dan l-Att jew ma’ regolamenti magħmulin tahtu jew ma’ kull liġi 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, jista’ b’avviż bil-miktub jitlob lil xi persuna -

(a) li tippubblika kopja ta’ l-ordni ta’ tharis magħmula 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, jew

(b) li tippubblika dikjarazzjoni korrettiva kif mitlub mill-ordni ta’ tharis għar-rigward ta’ kull ksur ta’ dan l-Att, kontra regolamenti magħmulin tahtu, jew kontra kull liġi ohra li tittratta d-drittijiet u l-protezzjoni tal-konsumatur hekk kif jista’ jiġi msemmi mill-Ministru wara li jikkonsulta mal-Kunsill b’Ordni fil-Gazzetta.

(2) Il-pubblikazzjoni għandha ssir f’mill-inqas żewġ gazzetti ta’ kuljum u jekk xieraq f’xi mezz ieħor ta’ komunikazzjoni fi żmien sebat ijiem minn meta l-persuna tirċievi l-avviż u din għandha ssir bi spejjeż tal-persuna li tkun ġiet 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 ġie notifikat l-avviż, kull spejjeż magħmula, bhala dejn ċivili.”

Emenda ta' l-  
artikolu 102 ta' l-  
Att prinċipali.

**44.** Fis-subartikolu (1) ta' l-artikolu 102 ta' l-Att prinċipali għall-kliem “bil-miktub lil uffiċjal pubbliku li jwettaq xi wahda mill-funzjonijiet tiegħu jew li jeżerċita xi setgħa lilu mogħtija taht din it-Taqsima, għandhom jidhlu l-kliem “bil-miktub jawtorizza uffiċjal pubbliku, jew bil-kunsens tal-Ministru, kull persuna impjegata minn korp inkorporat stabbilit mill-liġi, sabiex jaqdi kwalunkwe mill-funzjonijiet tiegħu jew jeżerċita kwalunkwe poter mogħti lilu taht dan l-Att. Kull uffiċjal jew persuna tali għandu”.

Emenda ta' l-  
artikolu 105 ta' l-  
Att prinċipali.

**45.** L-artikolu 105 għandu jiġi emendat kif ġej:

(a) fil-paragrafu (a) tiegħu immedjatament wara l-kliem “jew lil xi uffiċjal pubbliku” għandhom jiżdiedu l-kliem “jew lil xi persuna awtorizzata”;

(b) fil-paragrafu (b) tiegħu, għall-kliem “jew ma’ uffiċjal pubbliku filwaqt li jkun qed iwettaq dmirijietu taht din it-Taqsima,” għandhom jidhlu l-kliem “jew ma’ uffiċjal pubbliku jew ma’ persuna awtorizzata filwaqt li jkun qed iwettaq dmirijietu taht din it-Taqsima,” u

(ċ) immedjatament wara l-paragrafu (b) tiegħu għandu jiżdied il-paragrafu l-ġdid li ġej:

“(ċ) jirrifjuta jew jonqos milli jagħti informazzjoni kif mitlub taht din it-taqsima jew inkella jipprovdni informazzjoni falza jew qarrieqa.”.

Emenda ta' l-  
artikolu 106 ta' l-  
Att prinċipali.

**46.** L-artikolu 106 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikoli (1) u (3) tiegħu għandhom jiġu imħassra;

(b) is-subartikolu (2) għandu jiġi rinumerat bhala artikolu 106;  
u

(ċ) fl-artikolu 106 kif rinumerat, għall-kliem “meta tinsab hekk hatja tehel multa ta’ mhux inqas minn mitt lira u mhux iktar minn ghaxart elef lira”, għandhom jidhlu l-kliem “meta tinsab hekk hatja tehel multa ta’ mhux inqas minn mitejn lira (€465.87) u mhux iktar minn ghoxrin elf lira (€46,587.47).”.

Żieda ta' l-artikolu  
106A' ġdid ma' l-  
Att prinċipali.

**47.** Immedjatament wara l-artikolu 106 ta' l-Att prinċipali għandu jiżdied l-artikolu 106A il-ġdid li ġej:



“Multi  
amministrattivi.

106A. (1) Id-Direttur jista’/tista’ jimponi/timponi multa amministrattiva fuq persuna li, id-Direttur wara investigazzjoni taht l-artikolu 14A, jsib/issib hatja ta’ ksur ta’ disposizzjoni ta’ dan l-Att jew ta’ kwalunkwe regolament magħmul tahtu.

(2) Multa amministrattiva imposta għal ksur taht is-subartikolu (1) għandha tkun ta’ mhux inqas minn mitejn lira (€465.87) u mhux iktar minn għoxrin elf lira (€46,587.47):

Izda fil-każ fejn ordni ta’ tharis ma jiġix obdut id-Direttur jista’/tista’ jimponi/timponi wkoll multa ta’ mhux anqas minn hamsin lira (€116.47) u mhux aktar minn mitt lira (€232.94) kull jum, għal kull ġurnata li fiha ma jiġix obdut.

(3) Sabiex jiġi deċiż l-ammont tal-multa amministrattiva fir-rigward ta’ l-ksur tad-disposizzjonijiet ta’ dan l-Att, id-Direttur għandu/ha jsegwi/ssegwi r-regoli tat-Tieni Skeda, u fir-rigward ta’ ksur tar-regolamenti magħmula taht dan l-Att u ksur tad-dispożizzjonijiet ta’ liġijiet ohra amministrati mid-Direttur, id-Direttur għandu jsegwi/ssegwi r-regoli rispettivi li jiddeterminaw l-ammont tal-multa amministrattiva preskritti fihom.

(4) Id-Direttur jista’/tista’, flimkien mal-Ministru, minn żmien għall-żmien jemenda/temenda, jew jibdel it-Tieni Skeda ta’ dan l-Att.

(5) Qabel ma tiġi imposta l-multa amministrattiva taht dan l-artikolu, id-Direttur għandu/ha jikteb/tikteb lill-persuna kkonċernata javżah/a li multa amministrattiva tista’ tiġi imposta u jinformaha bl-ammont tal-multa li tista’ tiġi imposta u r-raġunijiet speċifiċi li għalihom qed tiġi imposta u jagħti/tagħti lill-persuna kkonċernata perjodu ta’ mhux inqas minn’hmistax il-ġurnata bħal ma d-Direttur jista’ jiddetermina li huwa approprijat fiċ-ċirkustanzi, waqt liema perjodu l-persuna ikkonċernata tista’ tagħmel is-sottomissjonijiet tagħha lid-Direttur:

Izda meta d-Direttur juża/tuża’ l-proċedura pprovduta fl-artikolu 14A, il-perjodu mogħti għas-sottomissjonijiet fl-imsemmi artikolu u f’dan l-artikolu jistgħu jingħataw flimkien.

(6) Qabel ma jiddeċiedi/tiddeċiedi dwar jekk tiġix imposta l-multa amministrattiva, id-Direttur għandu jikkunsidra/tikkunsidra s-sottomissjonijiet, jekk hemm, magħmula taht is-subartikolu (5).

(7) Jekk wara li jghaddi l-perjodu li waqtu is-sottomissjonijiet jistgħu isiru skond is-subartikolu (5), id-Direttur jikkunsidra/tikkunsidra li l-persuna kkonċernata ma tagħtix evidenza valida jew raġuni li turi li l-multa amministrattiva imsemmija fis-subartikolu (5) m'għandux jiġi impost, id-Direttur għandu/ha jimponi/timponi multa amministrattiva skond dan l-Att u għandu/ha jinnotifika/tinnotifika bil-miktub lill-persuna kkonċernata fejn tispeċifika n-natura tal-ksur u l-ammont tal-multa amministrattiva dovuta:

Iżda fejn id-Direttur uża/użat l-proċedura pprovduta taht l-artikolu 14A, l-imsemmija notifika tista' tingħata fid-deċiżjoni, li ssib il-ksur, mahruġa taht l-artikolu 14 A.

(8) L-avviż imsemmi fis-subartikolu (7) ser, mingħajr preġudizzju għad-dritt ta' appell taht l-artikolu 110C, man-notifika tal-kopja permezz ta' att ġudizzjarju fuq il-persuna indikata fl-avviż, jikkostitwixxi titolu eżekuttiv għall-effetti u l-finijiet tat-Titolu VII tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

(9) Minkejja d-disposizzjonijiet ta' l-artikolu 256(2) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, it-titolu eżekuttiv imsemmi fis-subartikolu (8) m'għandux jiġi infurzat qabel ma jghaddu 15 il-ġurnata minn notifika ta' l-att ġudizzjarju imsemmi fih:

Iżda fejn appell kontra multa amministrattiva jiġi ppreżentat skond l-artikolu 110C, id-disposizzjonijiet ta' l-istess artikolu għandhom japplikaw.”

Żieda ta' l-artikoli 107A u 107B ġodda ma' l-Att prinċipali.

**48.** Immedjatement wara l-artikolu 107 ta' l-Att prinċipali għandhom jiżdienu ż-żewġ artikoli ġodda li ġejjin:

“Ordni mid-Direttur.

107A. Fejn id-Direttur jiddeċiedi/tiddeċiedi li hemm ksur taht l-artikolu 14A, hu/hi jista'/tista, mingħajr preġudizzju għal kull rimedju iehor pprovdut taht dan l-Att, jordna r-restituzzjoni ta' kwalunkwe flus jew proprjetà mogħtija mill-konsumatur.

Rifużjoni tal-flejjes imhallsa.

107B. Parteċipanti, għajr dawk li jistabbilixxu, ihaddmu jew iġibu l-quddiem skema ta' *chain letter* skond l-artikolu 52A u skemi ta' bejgh piramidali ai termini tar-regola 14 ta' l-Ewwel Skeda għandu jkollhom d-dritt li mhux aktar tard minn sentejn mid-data li fiha għamlu l-ahhar pagament li

jibdew azzjoni quddiem il-qrati ordinarji sabiex jitolbu rifużjoni shiha ta' l-ammonti kollha imhallsa minnhom lill-iskema.”

- 49.** Għall-artikolu 108 ta' l-Att prinċipali għandu jidhol dan li ġej:

“Preskrizzjoni ta' reati u ksur amministrattivi. 108. Sakemm terminu differenti mhux preskritt għaliha, l-prosekuzzjoni ta' reat jew il-bidu ta' proceduri amministrattivi taht dan l-Att jew regolamenti magħmula tahtu, għandu jkun preskritt bl-iskadenza ta' tliet snin minn meta r-reat jew l-ksur jiġi allegat li jkun sar.”

Sostituzzjoni ta' l-artikolu 108 ta' l-Att prinċipali.

- 50.** Fl-Artikolu 109 ta' l-Att prinċipali għall-kliem “uffiċjal pubbliku” għandhom jidhlu l-kliem “uffiċjal pubbliku jew persuna awtorizzata”.

Emenda ta' l-artikolu 109 ta' l-Att prinċipali.

- 51.** Fis-subartikolu 1 ta' l-Artikolu 110 ta' l-Att prinċipali għall-kliem “Meta ordni jew avviz” għandhom jidhlu l-kliem “Meta deċiżjoni, ordni, mizura jew avviz”.

Emenda ta' l-artikolu 110 ta' l-Att prinċipali.

- 52.** Immedjatament wara l-Artikolu 110 ta' l-Att prinċipali għandha tizzied it-Taqsima XII ġdida li ġejja:

Żieda ta' Taqsima XII ġdida ma' l-Att prinċipali.

## “TAQSIMA XII

### Il-Bord ta' l-Appell għall-Affarijiet tal-Konsumatur

Il-Bord ta' l-Appell għall-Affarijiet tal-Konsumatur. 110A. (1) Ikun hemm Bord ta' l-Appelli magħruf bħala l-Bord ta' l-Appell għall-Affarijiet tal-Konsumatur li għandu jkollu l-ġurisdizzjoni li jisma' u jiddeċiedi appelli minn deċiżjonijiet, ordnijiet jew mizuri tad-Direttur kif ipprovdut f'dan l-Att.

(2) Il-Bord ta' l-Appell għall-Affarijiet tal-Konsumatur għandu jkun appuntat mill-Prim Ministru u għandu jkun magħmul minn:

(a) *Chairperson* li jkun/tkun avukat/avukatessa b'ta' lanqas seba' snin prattika; u

(b) żewġ membri oħra li minhabba l-esperjenza, il-kwalifiki jew l-attivitajiet tagħhom huma kkunsidrati mill-Prim Ministru bħala kapaċi li jqisu l-korrettezza jew

le tal-prattiċi kummerċjali mill-perspettiva ta' konsumatur u ta' kummerċjant.

(3) Iċ-*Chairperson* u l-membri l-oħra tal-Bord ta' l-Appell għandhom jiġu appuntati għal terminu ta' tlett snin u jkunu eliġibbli li jiġu re-appuntati.

(4) Il-Bord ta' l-Appell għandu ikun indipendenti fit-twettiq tal-funzjonijiet tiegħu.

(5) Iċ-*Chairperson* u l-membri l-oħra tal-Bord ta' l-Appell jistgħu jiġu rikuzati jew jastjenu għal kull raġuni li għaliha imhalled jista' jiġi rikuzat jew jastjeni skond il-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili. F'tali każ il-Prim Ministru għandu jappunta persuna li għandha l-kwalifiki taċ-*Chairperson* jew tal-membru rikuzat jew li astjena sabiex joqgħod minfloku.

(6) Membru tal-Kamra tad-Deputati jew tal-Parlament Ewopew jew ta' Kunsill-Lokali huwa/hija skwalifikat/a milli jiġi/tiġi appuntat/a jew li jkompli/tkompli jkun/tkun *Chairperson* jew membru tal-Bord ta' l-Appell sakemm hu jzomm dik il-kariga.

(7) Iċ-*Chairperson* jew membru tal-Bord ta' l-Appell jista' jitneħħa/titneħħa mill-uffiċċju tiegħu/tagħha biss mill-Prim Ministru minhabba negliġenza kbira, kunflitt ta' interess, inkompetenza, jew atti, jew ommissjonijiet li ma jixirqux lil membru tal-Bord ta' l-Appell. Meta jkun qed jagħmel dan, il-Prim Ministru għandu jpoġġi quddiem il-Kamra tad-Deputati stqarrija fejn jagħti r-raġunijiet għat-tneħħija ta' l-imsemmi membru.

(8) Il-Prim Ministru għandu jagħzel persuna li taqdi l-funzjonijiet ta' segretarju tal-Bord ta' l-Appell u din il-persuna għandha taqdi l-funzjonijiet f'tali kapacità skond l-*standards* etiċi approprjati mal-pożizzjoni tiegħu/tagħha.

Appell mid-deċiżjonijiet, ordnijiet jew miżuri minbarra mill-impożizzjoni mid-Direttur ta' multa amministrattiva.

110B. (1) Għandu jkun hemm appell lill-Bord ta' l-Appell mid-deċiżjonijiet, ordnijiet jew miżuri tad-Direttur magħmula taht dan l-Att.

(2) Kull persuna aggravata minn deċiżjoni, ordni jew miżura ghandha dritt ta' appell quddiem il-Bord ta' l-Appell:

Iżda f'kull każ, persuna li tagħmel appell lill-Bord ta' l-Appell ghandha tispjega wkoll l-interess ġuridiku tagħha f'dik d-deċiżjoni, ordni jew miżura li minnu qed tappella.

(3) Minghajr preġudizzju ghad-dispożizzjonijiet ta' l-artikolu 110C -

(a) appell minn deċiżjoni, ordni jew miżura tad-Direttur ghandu jsir permezz ta' talba u ghandha tiġi ppreżentata lis-segretarju tal-Bord ta' l-Appell fi żmien hmistax-il ġurnata mid-data li fiha l-imsemmija deċiżjoni, ordni jew miżura giet notifikata lill-persuna li qed tappella; u

(b) It-talba ta' appell ghandha tiġi notifikata lid-Direttur, li mhux aktar tard minn hmistax il-ġurnata minn din in-notifika ghandu jippreżenta/tippreżenta r-risposta tiegħu/tagħha għaliha, mas-segretarju tal-Bord ta' l-Appell.

Appell kontra multa amministrattiva imposta mid-Direttur.

110C. (1) Minghajr preġudizzju ghad-dispożizzjonijiet ta' din it-Taqsima, il-proċedura li trid tiġi segwita fir-rigward ta' appelli minn multi amministrattivi imposti mid-Direttur ghandha tkun regolata mid-dispożizzjonijiet ta' dan l-artikolu.

(2) Persuna li hija notifikata b'att ġudizzjarju imsemmi fl-artikolu 106A (8) tista' fi żmien hmistax il-ġurnata mid-data ta' tali notifika tippreżenta appell quddiem il-Bord ta' l-Appell fejn tikkontesta l-multa amministrattiva hekk iffissata.

(3) Il-Bord ta' l-Appell m'ghandux iħassar il-multa amministrattiva kif iffissata sakemm tali multa ma tistax *ex lege* tiġi imposta fiċ-ċirkostanzi tal-każ, jew ma tistax *ex lege* tiġi iffissata fl-ammont stabbilit mid-Direttur wara li jiġi kkunsidrat kif xieraq il-prinċipju ta' proporzjonalità.

(4) Il-Bord ta' l-Appell ghandu minghajr dewmien jipprepara l-appell sabiex jinstemgħa f'data kmieni,

liema data f'kull każ m'għandiex tkun aktar tard minn tletin ġurnata mid-data tan-notifika ta' l-appell lid-Direttur.

(5) L-appell u n-notifika tad-data stabbilita għas-smiegh għandha tiġi notifikata lid-Direttur mingħajr dewmien, u d-Direttur għandu jippreżenta r-risposta tiegħu fi żmien hmistax il-ġurnata mid-data tan-notifika ta' l-appell.

(6) Id-deċiżjoni tal-Bord ta' l-Appell, fuq appell imsemmi fis-subartikolu (2) li'tikkonferma l-imposizzjoni ta' multa stabbilita mid-Direttur jew tnaqqas tali multa, kif issir *res judicata* titqies bħala deċiżjoni tal-Bord ta' l-Appell ekwivalenti għal deċiżjoni tal-Prim Awla tal-Qorti Ċivili li tordna hlas mill-appellant ta' multa amministrattiva kif konfermata jew imnaqqsa.

(7) Għandu jkun hemm dritt ta' appell lill-Qorti ta' l-Appell għall-partijiet kollha fil-proċedura quddiem il-Bord ta' l-Appell skond l-artikolu 110F.

Deċiżjonijiet tal-Bord ta' l-Appell.

110D. (1) Meta l-Bord ta' l-Appell jiddeċiedi appell għandu jikkunsidra l-merti ta' l-appell, jikkonferma jew jhassar id-deċiżjoni, ordni jew miżura appellata parzjalment jew bis-shih, u jagħti bil-miktub ir-raġunijiet għad-deċiżjoni tiegħu. Tali deċiżjoni għandha tkun pubblika u tiġi kkomunikata lill-partijiet fl-appell.

(2) Suġġetti għad-disposizzjonijiet ta' l-artikolu 110F, id-deċiżjonijiet tal-Bord ta' l-Appell huma finali u jorbtu.

(3) Meta l-Bord ta' l-Appell iqis li wara li ġiet ikkunsidrata d-deċiżjoni tiegħu ta' l-appell u l-fatti rilevanti kollha hemm biżżejjed raġunijiet li jagħmlu ekwu li jsir hekk, hu jista' jew *ex officio* jew permezz ta' applikazzjoni mill-konsumatur li huwa parti fl-appell, jordna li l-ispejjeż, jew kollha jew parti minnhom, ta' parti li qeda tidher quddiem il-Bord ta' l-Appell li jirrelataw ma' t-tqabbid ta' avukat u, jew konsulent tekniku għandhom jithallsu lill-konsumatur ikkonċernat mill-parti l-oħra fl-appell fl-ordni ta' l-ismijiet kif imsemmija.

Proedura tal-Bord ta' l-Appell.

110E. (1) Fil-qadi tal-funzjonijiet tiegħu, l-Bord ta' l-Appell jista' jharrek kull persuna sabiex tidher quddiemu u tixhed u tipproduċi dokumenti, u ċ-*Chairperson* tal-Bord ta'

l-Appell ghandu/ghandha jkollu/ha l-poter li jamministralthom/tamministralthom il-ġurament.

(2) Il-Bord ta' l-Appell ghandu jipprova jiddeċiedi appell fi żmien sittin ġurnata minn meta jghaddi l-perjodu li minnu d-Direttur jista'/tista' jipprezenta/tipprezenta risposta għall-appell imsemmi aktar il-fuq u f'kull'każ ghandu jagħti d-deċiżjoni finali tiegħu mhux aktar tard minn tletin ġurnata minn meta l-partijiet jiddikjaraw li kkonkludew l-provi u għamlu s-sottomissjonijiet finali.

(3) Sabiex jassistuh fil-qadi tal-funzjonijiet tiegħu l-Bord ta' l-Appell jista' jappunta esperti indipendenti u imparzjali sabiex jagħtuh pariri fuq kull fatt li jista' jkun rilevanti għall-kull appell ipprezentat quddiemu. F'dawn il-każijiet il-Bord ta' l-Appell ghandu jkollu d-dritt li jagħti ordnijiet kemm proviżorji kif ukoll finali fir-rispett tal-hlas ta' l-ispejjeż u drittijiet ta' dawn l-esperti minn'kull wiehed mill-partijiet fl-Appell.

(4) Il-Bord ta' l-Appell fil-qadi tal-funzjonijiet tiegħu ghandu jkollu l-istess poteri li jikkompetu skond il-liġi lill-Prim Awla tal-Qorti Ċivili.

(5) Il-Ministru jista' suġġett għad-dispożizzjonijiet ta' dan l-Att, permezz ta' regolamenti jippreskrivi l-proċedura li għandha tiġi osservata quddiem il-Bord ta' l-Appell, u filwaqt li suġġett għalihom u għal kull disposizzjoni oħra taht dan l-Att, il-Bord ta' l-Appell jista' jirregola l-proċedura tiegħu.

(6) Il-Ministru jista' flimkien mal-Ministru responsabbli għall-finanzi permezz ta' regolamenti taht dan l-Att, jistabbilixxi tariffi kif meqjus neċessarju fir-rigward ta' kull proċedura quddiem il-Bord ta' l-Appell.

(7) Il-Ministru jista' permezz ta' regolamenti magħmula taht dan l-Att, jemenda kull terminu msemmi fis-subartikolu (2).

Appell  
quddiem il-  
Qorti ta' l-  
Appell.

110F. (1) Kwalunkwe parti fl-appell quddiem il-Bord ta' l-Appell, inkluż id-Direttur, li jhossu aggravat mid-deċiżjoni tal-Bord ta' l-Appell jista', fuq punti ta' liġi jew punti ta' ġustizzja naturali, jappella lill-Qorti ta' l-Appell (Ġurisdizzjoni Inferjuri) kif kostitwita skond l-artikolu 41(6) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili permezz

ta' rikors ipprezentat fir-registru tal-Qorti fi zmien hmistax il-gurnata mid-data tad-deciżjoni tal-Bord ta' l-Appell.

(2) Il-Ministru responsabbli għall-gustizzja jista' permezz ta' regolamenti taht dan is-subartikolu jistabbilixxi tariffi pagabbli fir-registru tal-Qorti fir-rigward tal-prezentazzjoni ta' atti gudizzjarji fir-registru tal-qorti b'rabta ma' l-appelli taht dan l-artikolu:

Izda sakemm dan it-tariffi jigu stabbiliti għandhom japplikaw it-tariffi stabbiliti fl-Skeda A tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

(3) Il-Bord stabbilit taht l-artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jista' jagħmel Regoli tal-Qorti li jirregolaw l-appelli quddiem il-Qorti ta' l-Appell taht dan l-artikolu.

L-istatus tad-deciżjoni, ordni jew miżura fejn appell huwa pendent quddiem il-Bord ta' l-Appell jew il-Qorti ta' l-Appell.

110G. (1) Minghajr preġudizzju għall-artikolu 97 (3), kwalunkwe deciżjoni, ordni jew miżura tad-Direttur li huwa pendent fuq appell kemm jekk quddiem il-Bord ta' l-Appell jew il-Qorti ta' l-Appell, għandha tibqgħa valida u għandha tiġi osservata mill-partijiet kollha li fuqhom tapplika d-deciżjoni, l-ordni jew il-miżura.

(2) Il-Bord ta' l-Appell jew il-Qorti Ċivili skond il-każ, fejn tikkunsidra approprjat, tista' fuq talba ta' parti fl-appell, tissospendi d-deciżjoni, ordni jew miżura tad-Direttur sakemm ma jiġix deciż l-appell. Il-Bord ta' l-Appell jew il-Qorti ta' l-Appell meta tiddeċiedi li tissospendi d-deciżjoni, l-ordni jew il-miżura għandha tagħti raġunijiet tagħha għaliex qed tagħmel hekk."

Żieda ta' l-Ewwel Skeda ġdida ma' l-Att prinċipali.

**53.** Immedjatement waral-artikolu 111 ta' l-Att prinċipali, għandha tizzied l-Ewwel Skeda ġdida kif ġejja:

**“L-Ewwel Skeda  
[Artikolu 51B (4)]**

Prattiċi Kummerċjali li huma mhux ġusti *ipso Jure*

**Prattiċi kummerċjali qarrieqa**

1. Fejn il-kummerċjant/a isostni/issostni li huwa/hija firmatarju/a ta' kodiċi ta' kondotta meta ma jkunx/tkunx.



2. Il-wiri mill-kummerċjant/a ta' marka ta' fiduċja, marka ta' kwalità jew ekwivalenti mingħajr ma jkun kiseb/kisbet l-awtorizzazzjoni mehtieġa.

3. Fejn il-kummerċjant/a isostni/issostni li fil-kodiċi ta' kondotta għandu/għandha l-appoġġ ufficjali ta' xi korp pubbliku jew korp iehor, meta ma jkollux/jkollhiex.

4. Fejn il-kummerċjant/a isostni/issostni li huma nkluzi l-prattiċi kummerċjali tiegħu/ha jew xi prodott ġie approvat, appoġġat jew awtorizzat minn korp pubbliku jew privat iehor meta dan ma kienx jew isostni/issostni hekk mingħajr ma jikkonforma/tikkonforma ruhu/ha mat-termini ta' l-approvazzjoni, appoġġ jew awtorizzazzjoni.

5. Fejn il-kummerċjant/a jagħmel/tagħmel stedina sabiex jinxtraw prodotti bi prezz speċifiku mingħajr ma juri l-eżistenza ta' raġunijiet ġustifikati li l-kummerċjant/a jista' jkollu/ha sabiex jemmen/temmen li mhuwiex sejjer ikun jista' jforni jew iqabbad kummerċjant/a iehor/ohra sabiex iforni/tforni dawk il-prodotti jew prodotti ekwivalenti għal dak il-prezz għal perjodu u fil-kwantitajiet li huma raġonevoli relattivament għall-prodott, għal-livell ta' reklamar tal-prodott u għall-prezz offrut (*bait advertising*).

6. Fejn il-kummerċjant/a jagħmel/tagħmel stedina sabiex jinxtraw prodotti bi prezz speċifikat u imbagħad:

(a) jirrifjuta/tirrifjuta li juri l-oġġett reklamati lill-konsumaturi; jew

(b) jirrifjuta/tirrifjuta li jiehu/tiehu ordnijiet għall-prodott jew li jfornih/tfornih fi żmien raġonevoli; jew

(ċ) juri kampjun difettuż tiegħu/tagħha, bl-intenzjoni li jippromwovi/tippromwovi prodott differenti (*bait and switch*).

7. Fejn il-kummerċjant/a jiddikjara/tiddikjara b'mod falz li prodott ikun disponibbli biss għal żmien limitat hafna, jew li ikun disponibbli biss taht kondizzjonijiet partikolari għal żmien limitat hafna sabiex iqanqal deċiżjoni immedjata u jcaħhad lill-konsumaturi mill-opportunità jew miż-żmien suffiċjenti sabiex jagħmlu għażla informata.

8. Fejn il-kummerċjant/a jimpenja ruhu/ha li jipprovdi servizz ta' wara l-bejgħ lill-konsumaturi li magħhom il-kummerċjant/a ikkomunika/ikkomunikat qabel it-tranzazzjoni b'lingwa li mhijiex il-lingwa uffiċjali ta' l-Istat Membru fejn il-kummerċjant/a jinsab/tinsab u imbagħad jagħmel/tagħmel dan is-servizz disponibbli biss b'lingwa oħra mingħajr ma jindika dan b'mod ċar lill-konsumatur qabel il-konsumatur jimpenja ruhu fit-tranzazzjoni.

9. Fejn il-kummerċjant/a jistqarr/tistqarr u b'mod iehor johloq/tohloq l-impressjoni li xi prodott jista' jinbiegħ legalment meta ma jistax.

10. Fejn il-kummerċjant/a jipprezenta/tipprezenta drittijiet mogħtija mil-liġi lill-konsumaturi bħala karatteristika distintiva ta' l-offerta tiegħu.

11. Mingħajr preġudizzju għad-dispożizzjonijiet ta' l-Att dwar ix-Xandir (Kap. 350) u r-regolamenti magħmula tahtu, fejn il-kummerċjant/a juża/tuża kontenut editorjali fil-midja sabiex jippromwovi/tippromwovi prodott fejn huwa/hija jkun/tkun hallas/hallset għall-promozzjoni tiegħu/tagħha mingħajr ma jagħmel/tagħmel dan ċar fil-kontenut jew permezz ta' immaġini u hsejjes identifikabbli b'mod ċar mill-konsumatur (*advertorial*).

12. Fejn il-kummerċjant/a jagħmel/tagħmel affermazzjoni li hija essenzjalment mhux eżatta dwar in-natura u l-firxa tar-riskju għal-harsien jew is-sigurtà personali tal-konsumatur jew tal-familja tiegħu jekk il-konsumatur ma jixtrix il-prodott.

13. Fejn il-kummerċjant/a jippromwovi/tippromwovi prodott simili għal xi prodott magħmul minn manifattur partikolari b'mod tali li deliberatament iqarraq/tqarraq bil-konsumatur li jemmen li l-prodott huwa magħmul minn dak l-istess manifattur meta ma jkunx.

14. Fejn il-kummerċjant/a jistabbilixxi/tistabilixxi, jopera/topera jew jippromwovi/tippromwovi skema promozzjonali piramidali fejn konsumatur iħallas għall-opportunità li jirċievi kumpens derivat primarjament mill-introduzzjoni ta' konsumaturi oħrajn fl-iskema minflok mill-bejgħ jew konsum ta' prodotti.

15. Fejn il-kummerċjant/a isostni/issostni li dalwaqt sejjer/sejra jieqaf/tieqaf mill-kummerċ jew ibiddel/tbidel il-post tal-kummerċ meta ma jkunx/tkunx sejjer/sejra jagħmel/tagħmel dan.

16. Fejn il-kummerċjant/a isostni/issostni li prodotti jistgħu jiffaċilitaw ir-rebħ f'loġhob ta' l-azzard.

17. Fejn il-kummerċjant/a isostni/issostni, bil-qerq, li prodott jista' jfejjaq mard, xi disfunzjoni jew malformazzjonijiet.

18. Fejn il-kummerċjant/a jgħaddi/tgħaddi tagħrif li huwa essenzjalment mhux eżatt dwar kondizzjonijiet tas-suq jew dwar il-possibbiltà li jinstab il-prodott bl-intenzjoni li jipperswadi lill-konsumatur jakkwista l-prodott b'kondizzjonijiet inqas favorevoli mill-kondizzjonijiet normali tas-suq.

19. Fejn il-kummerċjant/a isostni/issostni fi prattika kummerċjali li joffri parteċipazzjoni f'xi kompetizzjoni jew promozzjoni ta' premju mingħajr ma jagħti/tagħti l-premji deskritti jew ekwivalenti raġonevoli.

20. Fejn il-kummerċjant/a jiddeskrivi/tiddeskrivi prodott bħala "gratis", "b'xejn", "mingħajr hlas" jew simili jekk il-konsumatur għandu jhallas xi haġa oħra barra l-prezz li inevitabbilmment kellu jhallas sabiex wieġeb għall-prattika kummerċjali u sabiex għabar jew hallas għall-kunsinna ta' l-oġġett.

21. Fejn il-kummerċjant/a jinkludi/tinkludi fil-materjal promozzjonali fattura jew rikjesta oħra ta' hlas li tagħti l-impressjoni lill-konsumatur li huwa kien diġà ordna l-prodott kummerċjalizzat meta ma kienx għamel dan.

22. Fejn il-kummerċjant/a bil-qerq isostni/issostni jew johloq/tohloq l-impressjoni li huwa/hija ma jkunx qieghed/qegħda jaġixxi/tagixxi għall-finijiet konnessi mal-kummerċ, negozju, sengħa jew professjoni tiegħu/tagħha, jew bil-qerq juri ruħu/ruħha bħala konsumatur.

23. Fejn il-kummerċjant/a bil-qerq jagħti/tagħti l-impressjoni li jeżisti servizz ta' wara l-bejgħ fir-rigward ta' prodott fi Stat Membru iehor barra minn dak li fih il-prodott huwa mibjugħ.

24. Fejn il-kummerċjant/a johloq/tohloq l-impressjoni li l-konsumatur ma jistax iħalli l-post qabel ma jsir kuntratt.

25. Fejn il-kummerċjant/a jagħmel/tagħmel żjarat personali fid-dar tal-konsumatur u jinjora/tinjora t-talba tal-konsumatur sabiex jitlaq/titlaq jew sabiex ma jirritornax/tirritornax hlief f'ċirkostanzi u sal-punt ġustifikat, skond il-liġi nazzjonali, sabiex jinforza/tinforza obligazzjoni kontrattwali. Dan huwa mingħajr preġudizzju għall-artikolu 5A ta' l-Att dwar Kuntratti fuq l-Għatba tal-Bieb (Kap. 317).

26. Fejn il-kummerċjant/a jagħmel/tagħmel solleċitazzjonijiet persistenti u mhux mixtieqa permezz tat-telefown, tal-faks, bl-e-mail jew mezz iehor remot hlief f'ċirkostanzi u sal-punt ġustifikat, skond il-liġi nazzjonali, sabiex jinforza/tinforza obligazzjoni kontrattwali. Dan huwa mingħajr preġudizzju għar-regolamenti 8 u 9 tar-Regolamenti dwar il-Bejgħ mill-Bogħod (A.L. 186 ta' 2001) u (Kap. 440) u r-Regolamenti ta' l-2003 dwar l-Ipproċessar ta' *Data* Personali fis-Settur tal-Komunikazzjonijiet Elettronici (A.L. 16 ta' 2003).

27. Fejn il-kummerċjant/a jesigi/tesigi li konsumatur li jixtieq iressaq pretensjoni fuq polza ta' assigurazzjoni jipproduċi dokumenti li ma jistghux raġonevolment jiġu kkunsidrati rilevanti għall-kwistjoni jekk il-pretensjoni kinetx valida, jew jonqos sistematikament milli jwieġeb/twieġeb għal korrispondenza pertinenti, sabiex jiddiswadi/tiddiswadi xi konsumatur milli jeżerita d-drittijiet kontrattwali tiegħu.

28. Fejn il-kummerċjant/a jinkludi/tinkludi f'reklam it-tiegħi dirett lit-tfal sabiex jixtru jew sabiex jipperswadu l-ġenituri tagħhom jew adulti oħrajn sabiex jixtrulhom il-prodotti reklamati. Din id-dispożizzjoni hija mingħar preġudizzju għar-regola 6 tal-Kodiċi tax-Xandir dwar il-Protezzjoni tal-Minuri, 2000 (A.L. 160 ta' 2000).

29. Fejn il-kummerċjant/a jitlob/titlob hlas immedjat jew differit għar-ritorn jew għall-kustodja ta' prodotti forniti minnu/ha, iżda mhux solleċitati mill-konsumatur (bejgħ mhux mitlub).

30. Fejn il-kummerċjant/a jgħarraf/tgħarraf espliċitament lill-konsumatur li jekk ma jixtrix il-prodott jew servizz, ix-xogħol jew l-għajxien tal-kummerċjant/a ikunu fil-periklu.

31. Fejn il-kummerċjant/a johloq/tohloq l-impressjoni falza li konsumatur diġà rebah, se jirbah, jew li hekk kif jagħmel xi azzjoni partikolari jirbah, xi premju jew xi benefiċċju ekwivalenti iehor, meta fil-fatt:

- ma jkun hemm ebda premju jew benefiċċju ekwivalenti iehor, jew

- it-tehid ta' xi azzjoni fir-rigward tal-ġbir tal-premju jew ta' l-benefiċċju ekwivalenti iehor tehtieg lill-konsumatur li jhallas xi flus jew li jidhol f'xi spejjeż."

**54.** Immedjatament wara l-Ewwel Skeda ġdida ta' l-Att prinċipali, għandha tizzied it-Tieni Skeda ġdida kif ġejja:

Żieda tat-Tieni Skeda ġdida ma' l-Att prinċipali.

### **"It-Tieni Skeda**

#### **Artikolu 106A (3)**

#### **Multi Amministrattivi**

1. Meta qed jiddeċiedi/tiddeċiedi l-ammont tal-multi amministrattivi speċifikati fl-artikolu 106A, id-Direttur għandu/ha jkun immexxi/ja mill-kunsiderazzjonijiet li ġejjin.

Ksur taht l-Artikoli 51F, 52A u 53

2. Għall-ksur taht l-artikoli 51F, 52A u 53, l-ammont minimu tal-multa għandu jkun elf lira (€2329.37);

Izda d-Direttur jista'/tista' meta jkun/tkun qed jiffissa/tiffissa l-multa, jikkunsidra/tikkunsidra ċirkustanzi li jistgħu jwasslu għal żieda jew tnaqqis fl-ammont bażiku;

Izda ukoll id-Direttur għandu/ha jagħmel/tagħmel hekk fuq il-baži ta' evalwazzjoni kompluta li tikkunsidra ċ-ċirkustanzi rilevanti kollha.

3. Id-Direttur jista'/tista' jimponi/timponi multa amministrattiva oghla minn dik bażika fejn hemm ċirkustanzi aggravanti, ikkunsidrata l-gravità u d-dewmien tal-ksur u, jew l-ammont ta' qligħ magħmul, bħala riżultat tal-ksur, li mhux dovut.

4. Minghajr preġudizzju għall-ġeneralità tar-regola 3 dawn li ġejjin għandhom jkunu f'kull ċirkustanza kkunsidrati bħala ċirkustanzi aggravanti:

- meta il-ksur huwa prattika kummerċjali mhux ġusta nkluża fl-Ewwel Skeda, l-ammont bażiku jiżdied b'somma ta' mhux anqas minn seba' mija u hamsin lira (€1747.03) u mhux aktar minn elfejn lira (€4658.75);

- Fil-każ tat-tieni ksur jew ksur sussegwenti, l-ammont bażiku jiżdied b'elf lira (€2329.37) ghal kull ksur sussegwenti;

- fejn il-prattika jew l-iskema li tikkostitwixxi l-ksur hija l-mezz prinċipali li biha l-kummerċjant/a jmexxi/tmexxi jew jopera/topera l-kummerċ tiegħu/tagħha, l-ammont bażiku jiżdied b'somma li mhux anqas minn seba' mija u hamsin lira (€1747.03) u mhux aktar minn elfejn lira (€4658.75);

- fejn il-prattika jew l-iskema li tikkostitwixxi l-ksur qeghda speċifikatament timmira għall-konsumaturi li huma vulnerabbli, l-ammont bażiku jiżdied b'elf lira (€2329.37);

- fejn il-prattika kummerċjali mhux ġusta hija akkumpanjata minn xi wiehed mill-fatturi imsemmija fl-artikolu 51E(2) ta' l-Att l-ammont bażiku jiżdied b'somma li mhux anqas minn seba' mija u hamsin lira (€1747.08) u mhux aktar minn elfejn lira (€4658.75);

5. L-ammont jista' jitnaqqas fejn id-Direttur jsib/ssib li hemm ċirkustanzi attenwanti b'mod partikolari:

- fejn il-persuna kkonċernata tipprovdi evidenza li hu/hi waqqaf/waqfiet il-prattika kummerċjali mhux ġusta li tikkostitwixxu l-ksur malli d-Direttur beda/bdiet l-investigazzjonijiet taht l-artikolu 10 ta' l-Att, l-ammont bażiku jitnaqqas b'mhux aktar minn għoxrin fil-mija;

- fejn il-persuna kkonċernata tipprovdi evidenza li hadet il-passi adegwati sabiex tnaqqas l-effetti negattivi tal-ksur, l-ammont bażiku jitnaqqas b'mhux aktar minn għaxra fil-mija.

6. L-ammont finali tal-multa amministrattiva f'kull każ m'għandux jeċċedi l-għoxrin elf lira (€46587.47) jew ikun anqas minn mitejn lira (€465.87).

7. Fejn il-persuna li hija notifikata b'avviż skond l-artikolu 106 A (7) ta' dan l-Att tiddeċiedi li thallas il-multa amministrattiva mingħajr kontestazzjoni, l-ammont finali tal-multa amministrattiva deċiza skond ir-regoli msemmija iktar 'il fuq tonqos b'mhux aktar minn għoxrin fil-mija:

Iżda din ir-regola ma tapplikax fil-każ tat-tieni ksur jew ksur sussegwenti.

Ksur taht l-Artikolu 12

8. Għall-ksur msemmi taht l-artikolu 12 l-ammont tal-multa m'għandux jkun anqas minn elfejn lira (€4658.75) u mhux aktar minn hamest elef lira (€11646.87).

Ksur taht l-Artikolu 14B

9. Għall-ksur msemmi taht l-artikolu 14B l-ammont tal-multa m'għandux jkun anqas minn elfejn lira (€4658.75) u mhux aktar minn hamest elef lira (€11646.87).

Ksur taht l-Artikolu 94

10. Għall-ksur msemmi taht l-artikolu 94 l-ammont tal-multa m'għandux jkun anqas minn elfejn lira (€4658.75) u mhux aktar minn għaxart elef lira (€23293.73);

Iżda fil-każ fejn ordni ta' tharis ma jiġix obdut id-Direttur jista'/tista' jimponi/timponi wkoll multa ta' mhux anqas minn hamsin lira (€116.47) u mhux aktar minn mitt lira (€232.94) għall-kull ġurnata li fiha ma jiġix obdut.”

## Taqsimi II

### EMENDA TAL-KODIĊI KUMMERĊJALI

**55.** Din it-taqsimi temenda u għandha tinqara u tiftiehem bhala haġa waħda mal-Kodiċi Kummerċjali hawn iktar 'il quddiem imsemmi bhala “il-Kodiċi”

Emenda tal-Kodii Kummerċjali. Kap. 13.

**56.** Immedjatament wara l-artikolu 32 tal-Kodiċi, għandhom jiżdiedu l-artikoli l-godda 32A u 32B kif ġej:

Żieda ta' l-artikoli 32A u 32B godda mal-Kodiċi.

“Reklamar Komparattiv Permess.

32A. (1) Kummerċjanti m'għandhomx jagħmlu reklamar komparattiv.

(2) Minkejja s-subartikolu preċedenti reklamar komparattiv huwa, safejn il-paragun huwa konċernat, permess meta l-kundizzjonijiet li ġejjin jiġu sodisfatti:

(a) ma jkunx qarrieqi skond it-tifsira ta' l-artikolu 32B jew skond it-tifsira ta' l-artikoli 51C u 51D ta' l-Att dwar l-Affarijiet tal-Konsumatur;

(b) ikun jipparaguna oġġetti jew servizzi li jissodisfaw l-istess htigijiet jew li huma mahsuba għall-istess għan;

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

(d) ma jkunx inaqqas mill-kreditu jew imaqdar *trade marks*, l-ismijiet kummerċjali, jew il-marki distintivi oħra, l-oġġetti, is-servizzi, l-attivitajiet, jew iċ-ċirkostanzi ta' xi kompetitur;

(e) għal prodotti b'titolu ta' oriġini, f'kull każ ikun jirreferi għal prodotti bl-istess titolu;

(f) ma jieħux vantaġġ mhux ġust mir-reputazzjoni ta' xi *trade mark*, isem kummerċjali jew marki distintivi oħra ta' xi kompetitur jew tat-titolu ta' oriġini ta' prodotti konkorrenti;

(g) ma jkunx jippreżenta oġġetti jew servizzi bhala imitazzjonijiet jew repliki ta' merkanzija jew servizzi li għandhom *trade mark* jew isem kummerċjali protett;

(h) ma jkunx johloq konfużjoni bejn kummerċjanti, bejn dak li jirreklama u xi kompetitur jew bejn *trade marks*, l-ismijiet kummerċjali jew xi marki distintivi oħra, oġġetti jew servizzi ta' dak li jirreklama u dawg ta' xi kompetitur.



(3) Kull paragun li jirreferi ghal offerta speċjali ghandu jindika b'mod ċar u mhux ekwivoku d-data li fiha l-offerta tintemm jew, fejn ikun xieraq, li l-offerta speċjali tkun bla hsara ghad-disponibbiltà ta' l-oġġetti u servizzi, u, fejn l-offerta speċjali tkun ghadha ma bdiex, id-data tal-bidu tal-perijodu li matulu l-prezz speċjali jew kondizzjonijiet speċifiċi ohra ghandhom japplikaw. “Offerta speċjali” f'dan is-subartikolu tirreferi għall-prezz ta' l-oġġetti jew is-servizzi jew kwalunkwe kundizzjoni speċifika li tahtha l-oġġetti jew is-servizzi ghandu jiġu pprovduti.

(4) Għall-ghan ta' dan l-Artikolu ‘reklamar komparattiv’ ifisser kull reklamar li espliċitament jew b'deduzzjoni jidentifika kompetitur jew oġġetti jew servizzi offruti minn kompetitur.

Reklamar  
qarrieqi.

32B. (1) Il-kummerċjanti m'għandhomx jagħmlu xi forma ta' reklamar qarrieqi.

(2) Reklam huwa qarrieqi jekk inkluża l-preżentazzjoni tiegħu, iqarraq jew probabbilment iqarraq bil-persuni li lejhom ikun indirizzat jew li għandhom jasal, u jekk minhabba n-natura qarrieqa tiegħu, hu probabbilment jaffettwa l-imġieba ekonomika tagħhom jew huwa wiehed li għal dawk ir-raġunijiet jagħmel hsara jew probabbilment jagħmel hsara lil xi kompetitur tal-persuna li dan ir-reklam ghandu l-ghan li jipromwovi l-interessi tagħha.

(3) Sabiex jiġi stabbilit jekk reklamar huwiex qarrieqi, ghandu jittiehed kont tal-karatteristiċi tiegħu kollha, u b'mod partikulari ta' kull informazzjoni li jista' jkun fih dwar -

(a) il-karatteristiċi ta' oġġetti jew servizzi, inkluża d-disponibbiltà tagħhom, in-natura, l-eżekuzzjoni, il-kompożizzjoni, il-metodu u d-data tal-manifattura jew provvista, kemm ikunu adattati għall-iskop, l-użu, il-kwantità, l-ispeċifikazzjoni, l-oriġini ġeografika jew kummerċjali jew ir-rizultati normalment mistennija mill-użu tagħhom, jew ir-rizultati u l-karatteristiċi materjali tat-testijiet jew kontrolli mwettqa fuq l-oġġetti jew is-servizzi;

(b) il-prezz jew il-mod li bihom l-prezz jiġi kkalkolat, u l-kondizzjonijiet li bihom l-oġġetti jiġu forniti jew is-servizzi jkunu mogħtija;

(ċ) in-natura, l-attributi u d-drittijiet ta' min jagħmel ir-reklam, bhall-identità u l-attiv tiegħu, il-kwalifiki u l-pussess ta' drittijiet ta' proprjetà industrijali, kummerċjali jew intellettuali jew kwalunkwe premijiet u distinzjonijiet miksuba minnu.”

Żieda ta' l-artikolu 36A ġdid mal-Kodiċi.

**57.** Immedjatament wara l-artikolu 36 tal-Kodiċi għandu jidhrol l-artikolu 36A il-ġdid li ġej:

“Interpretazzjoni.

36A. Għall-ghanjiet ta' dan is-subtitolu, “reklamar” tfisser kwalunkwe forma ta' rappreżentazzjoni inkluż katalgu, ċirkolari u lista tal-prezzijiet, dwar xi kummerċ negozju, senġha jew professjoni sabiex tingieb 'il quddiem l-provvista jew it-trasferiment ta' oġġetti jew servizzi, propjetà immobbli, drittijiet jew obbligi u 'riklam' għandu jinftiehem bl-istess mod.”

Emenda ta' l-artikolu 37 tal-Kodiċi.

**58.** Fis-subartikolu (3) ta' l-artikolu 37 tal-Kodiċi, għall-kliem “ma tkunx anqas minn għaxar liri u l-anqas iżjed minn hames mitt lira”, għandhom jidhlu l-kliem “ma tkunx anqas minn mitejn lira (€465.87) u lanqas iżjed minn elfejn lira (€4658.75)”.

### Taqsimha III

#### EMENDA TA' L-ATT DWAR KUNTRATTI FUQ L-GĦATBA TAL-BIEB

Emenda ta' l-Att dwar Kuntratti fuq l-Għatba tal-Bieb. Kap. 317.

**59.** Din il-parti temenda u għandha tinqara u tinftiehm bħala waħda ma' l-Att dwar Kuntratti fuq l-Għatba tal-Bieb, hawn iktar il-quddiem imsemmi bħala “l-Att prinċipali”.

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

**60.** Fis-subartikolu (4) ta' l-artikolu 4 ta' l-Att prinċipali immedjatament wara l-kliem “jkun insab hati ta' xi reat taht dan l-Att” għandhom jidhru l-kliem “jew insab hati ta' xi ksur”.

Sostituzzjoni ta' l-artikolu 5A ta' l-Att prinċipali.

**61.** L-artikolu 5A ta' l-Att prinċipali għandu jiġi sostitwit kif ġej:

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

5A. (1) Min imur fid-dar jew fuq il-post tax-xogħol ta’ konsumatur bil-għan li jikkumerċja 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.

(2) Mingħajr preġudizzju għad-dispożizzjonijiet tat-Titolu I tat-Taqsima VII ta’ l-Att Dwar l-Affarijiet tal-Konsumatur, kwalunkwe persuna li jonqos milli jhalli tali dar jew post tax-xogħol meta jkun hekk mitlub ser ikun hati ta’ reat kontra dan l-Att u jista’ jehel meta jinsab hati multa ta mhux aktar minn hames mitt lira (€1164.69).”

**62.** Immedjatament wara l-artikolu 14 ta’ l-Att prinċipali, għandhom jiżdiedu iż-żewġ artikoli 14A u 14B li ġejjin:

Żieda ta’ l-artikoli 14A u 14B godda ma’ l-Att prinċipali.

“Ksur.

14A. Kull persuna li tonqos milli tobdi id-disposizzjonijiet ta’ dan l-Att minbarra l-artikoli 5 u 5A, liema nuqqas jikkonstitwixxi ksur kontra dan l-Att, ser jehel multa amministrattiva imposta mid-Direttur skond id-disposizzjonijiet ta l-Att Dwar l-Affarijiet tal-Konsumatur ta’ mhux anqas minn mitejn lira (€465.87) u mhux aktar minn elfejn lira (€4658.75).

Preskrizzjoni ta’ reati u ksur amministrattiv.

14B. Il-prosekuzzjoni ta’ reat jew il-bidu ta’ proċeduri amministrattivi għal ksur ta’ dispożizzjoni ta’ dan l-Att għandu jkun preskritt bl-iskadenza ta’ tlett snin minn meta r-reat jew l-ksur jiġi allegat li jkun sar.”

**63.** Immedjatament wara l-artikolu 15 ta’ l-Att prinċipali għandu jiżdied l-artikolu l-15A li ġej:

Żieda ta’ l-artikolu 15A ġdid ma’ l-Att prinċipali.

“Għan ta’ dan l-Att.

15A. L-għan ta’ dan l-Att huwa parzjalment dak li jimplementa d-disposizzjonijiet tad-Direttiva tal-Kunsill 85/577/KEE ta’ l-20 ta’ Diċembru 1985 biex thares lill-konsumatur rigward kuntratti nnegożjati barra mill-lok tan-negożju u d-disposizzjonijiet ta’ dan l-Att għandhom jiġu applikati u interpretati b’dan il-mod.”

### **Għanġiet u Raġunijiet**

L-għan primarju ta' dan l-Abbozz huwa dak li jemenda l-Att Dwar l-Affarijiet tal-Konsumatur, il-Kodiċi Kummerċjali u l-Att Dwar Kuntratti fuq L-Għatba tal-Bieb sabiex jiġu indirizzati l-obbligi ta' Malta bħala Stat Membru li tiżgura trasportazzjoni tajba ta' numru ta' Direttivi prinċiplament id-Direttiva 2005/29/EC tal-Parlament Ewropew u tal-Kunsill tal-11 ta' Mejju 2005 dwar prattiċi kummerċjali żleali fin-negozju mal-konsumatur fis-suq intern.

**A BILL  
entitled**

*AN ACT to amend the Consumer Affairs Act and to make  
amendments to other laws*

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 short title of this Act is the Consumer Affairs (Amendment) Act, 2007. Short title and commencement.

(2) Unless otherwise provided in its various parts, this Act shall come into force on the 12<sup>th</sup> December, 2007.

**Part I**

**AMENDMENT OF THE CONSUMER AFFAIRS ACT**

**2.** This Part amends and shall be read and construed as one with the Consumer Affairs Act, hereinafter referred to as “the principal Act”. Amendment of the Consumer Affairs Act. Cap. 378.

**3.** In the long title to the principal Act, immediately after the words “Consumer Claims Tribunals” there shall be added the words “and of the Consumer Affairs Appeals Board”. Amendment of long title of the principal Act.

4. (1) The “ARRANGEMENT OF ACT” of the principal Act shall be substituted as follows:

“ARRANGEMENT OF ACT

	Articles
PART I. Preliminary	1-2
PART II. Director of Consumer Affairs and the Consumer Affairs Council	3-15
PART III. Consumer Claims Tribunal	16-27
PART IV. Consumer associations	28-42
PART V. Declaration of principles	43
PART VI. Unfair contract terms	44-47C
PART VII. Unfair commercial practices and illicit schemes	
Title I - Unfair commercial practices	48-51J
Title II - Illicit schemes	52-55A
PART VIII. Liability for defective products	56-71A
PART IX. Sale of goods to consumers	72-93
PART X. Compliance orders	94-101
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Second schedule Administrative fines ”.

(2) All references to the Parts as they were prior to their re-numbering in any legislation shall, as from the 12<sup>th</sup> December 2007, be construed as references to the Parts as now re-numbered.

5. For the words “consumer protection co-operation Regulation” wherever they appear in articles 2, 3, 102 and 104A of the principal Act, there shall be substituted the words “Consumer Protection Co-operation Regulation”.

General amendment of articles 2, 3, 102 and 104A of the principal Act.

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

Amendment of article 2 of the principal Act.

(a) immediately after the definition “advertisement” there shall be added the following new definition:

““Appeals Board” means the Consumer Affairs Appeals Board established under Part XII of this Act;”;

(b) immediately after paragraph (iii) in the definition “consumer”, there shall be added the following new proviso:

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

(c) the definition “EEA State” shall be deleted;

(d) immediately after the definition “goods” there shall be added the following new definition:

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

(e) for the definition “qualifying body” there shall be substituted the following:

“qualified entity” means

(a) a registered consumer association,

(b) an independent public body, having a legitimate interest in ensuring the protection of the collective interests of consumers in Malta or in any other Member State in which such bodies exist,

(c) a voluntary organisation in Malta as the Minister may, after consulting the Council, designate by notice in the Gazette,

(d) a voluntary organisation in any other Member State whose purpose is to protect the interests referred to in paragraph (b) of this definition in accordance with the criteria laid down by their national law,

(e) any qualified entity from a Member State included in the list of qualified entities as published in the Official Journal of the European Union;” and

(f) paragraph (ii) in the definition “trader” shall be re-numbered as paragraph (iii), and there shall be added a new paragraph (ii) as follows:

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

Amendment of article 4 of the principal Act.

**7.** Paragraph (d) in subarticle (7) of article 4 of the principal Act shall be amended as follows:

(a) in the English text only, after the words “convicted of” there shall be added the words “or found guilty of”; and

(b) for sub-paragraph (v) thereof, there shall be substituted the following:

“(v) any offence or infringement contemplated in this Act, regulations made thereunder, the Customs Ordinance, the Trade Descriptions Act, the Doorstep Contracts Act, the Metrology Act or any other law repealed by any of the said Acts or Ordinances or any law replacing the same.”

Amendment of article 7 of the principal Act.

**8.** Subarticle (3) of article 7 of the principal Act shall be substituted by the following:

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

(a) be guilty of an offence punishable on conviction by a fine (*multa*) not exceeding twenty thousand liri (€46587.47), or



(b) be guilty of an infringement punishable by an administrative fine not exceeding twenty thousand liri (€46587.47)

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

**9.** Immediately after article 7 of the principal Act, there shall be added the following new article 7A: Addition of new article 7A to the principal Act.

“Power to issue guidelines. 7A. The Director may from time to time issue guidelines to provide general guidance on the interpretation of the provisions of this Act.”

**10.** Article 10 of the principal Act shall be amended as follows: Amendment to article 10 of the principal Act.

(a) the present provision shall be renumbered as subarticle (1) thereof;

(b) in subarticle (1) thereof as re-numbered, immediately after the words “Where an offence” there shall be added the words “or an infringement”, and for the words “the offence” wherever they appear in the subarticle, there shall be substituted the words “the offence or the infringement”; and

(c) immediately after subarticle (i) thereof as re-numbered, there shall be added the following new subarticle:

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

**11.** Article 12 of the principal Act shall be amended as follows: Amendment of article 12 of the principal Act.

(a) for subarticle (1) thereof, there shall be substituted the following:

“(1) Upon the conclusion of an investigation, where it appears to the Director that a trader has engaged in conduct

that constitutes a breach of, or failure to comply with, any regulations made under article 7 or under the provisions of article 9, or a breach or a failure to comply with the provisions of articles 44 to 47, 51 to 53 or with the provisions of the Doorstep Contracts Act, the Director may, at his discretion, instead of issuing a decision finding an infringement or instituting proceedings against the trader and, or issuing a compliance order, caution the trader and seek an undertaking in writing from the trader that he shall refrain from the conduct or practice specified in the undertaking for such period not exceeding three years, as may be specified by the Director. 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.”;

(b) subarticle (3) thereof shall be deleted;

(c) subarticles (4) and (5) thereof shall be renumbered as subarticles (3) and (4) respectively; and

(d) for subarticle (4) thereof as renumbered there shall be substituted the following:

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

Addition of new article 12A to the principal Act.

**12.** Immediately after article 12 of the principal Act, there shall be added the following new article 12A:

“Power to carry out investigations.

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

Amendment of article 13 of the principal Act.

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

(a) for the marginal note thereof, there shall be substituted the words:

“Criminal proceedings.”; and

(b) for subarticle (1) thereof, there shall be substituted the following:

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

**14.** In subarticle (1) of article 14 of the principal Act, immediately after the words “convicted for an offence against” there shall be added the words “a provision of the Act or against”.

Amendment of article 14 of the principal Act.

**15.** Immediately after article 14 of the principal Act, there shall be added the following two new articles 14A and 14B:

Addition of new articles 14A and 14B to the principal Act.

“Adminis-  
trative  
proceedings.

14A. (1) Upon commencing investigations in terms of article 12A concerning an alleged infringement of a provision of this Act or of any regulations made thereunder, the Director shall write to the person investigated informing him of the nature of the alleged infringement and granting the person concerned a period of not less than fifteen days as the Director may determine to be appropriate in the circumstances during which period the person concerned may make his submissions to the Director.

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

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

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

Interim  
measures.

14B. (1) Notwithstanding the provisions of article 14A, in cases of urgency due to the risk of immediate and serious harm to the collective interests of consumers, the Director may, before the conclusion of an investigation, on the basis of a *prima facie* finding of an infringement, order

interim measures to remedy the situation in advance of reaching a final decision, giving his reasons therefor:

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

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

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

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

(5) A person upon whom an interim measure has been served, may within fifteen days of the notification of the measure, appeal from the said measure by application before the Appeals Board:

Provided that such appeal shall not have the effect of suspending the interim measure.

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

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

Amendment of article 15 of the principal Act.

**16.** Article 15 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words “articles 10, 12, 13 and 14 shall apply to offences” there shall be substituted the words “articles 10, 12, 12A, 13, 14, 14A and 14B and Parts X, XI and XII shall apply to offences and, or infringements”; and

(b) for subarticle (2) thereof, there shall be substituted the following:

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

**17.** For paragraph (d) of subarticle (3) of article 17 of the principal Act, there shall be substituted the following: Amendment of article 17 of the principal Act.

“(d) has been convicted of any of the offences or found guilty of any of the infringements referred to in sub-paragraph (v) of article 4(7)(d).”

**18.** In subarticle (2) of article 36 of the principal Act, for the words “in accordance with article 7(1)(c)”, there shall be substituted the words “in accordance with article 7(1)(b)”. Amendment of article 36 of the principal Act.

**19.** In paragraph (g) of article 41 of the principal Act, for the words “under article 7(1)(c)”, there shall be substituted the words “under article 7(1)(b)”. Amendment of article 41 of the principal Act.

**20.** For the title to Part VI of the principal Act, there shall be substituted the new title “Unfair contract terms”. Substitution of title to Part VI of the principal Act.

**21.** In article 45 of the principal Act, immediately at the end of subarticle (2) thereof, there shall be added the following new proviso: Amendment of article 45 of the principal Act.

“Provided that, in so far as it is in plain intelligible language, the assessment of fairness of a term shall not relate –

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

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

**22.** Immediately after article 47 of the principal Act, there shall be added the following new articles 47A, 47B and 47C: Addition of new articles 47A to 47C to the principal Act.

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

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

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

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

Renumbering of Parts VII, VIII, IX, X and XI of the principal Act.

23. Part VII of the principal Act entitled “Liability for defective products”, Part VIII of the principal Act entitled “Sale of goods to consumers”, Part IX of the principal Act entitled “Compliance orders”, Part X of the principal Act entitled “Enforcement” and Part XI of the principal Act entitled “Miscellaneous” shall be re-numbered as Parts VIII, IX, X, XI and XIII respectively and any references to these Parts as they were prior to their re-numbering in any legislation shall, as from the 12<sup>th</sup> December 2007 be construed as references to the Parts as re-numbered.

Addition of new heading and sub-heading to the principal Act.

24. Immediately after the new article 47C of the principal Act, there shall be added the following new heading and sub-heading:

**“PART VII**

**Unfair commercial practices and illicit schemes**

**Title I**

**Unfair Commercial Practices”.**

Deletion of articles 48 to 51 of the principal Act.

25. Articles 48, 49, 50 and 51 of the principal Act shall be deleted.

Addition of new articles 51A to 51J to the principal Act.

26. Immediately after the deleted article 51 of the principal Act, there shall be added the following new articles 51A to 51J:

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

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

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

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

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

“invitation to purchase” means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of commercial communication used, which is such as to induce a consumer to make a purchase;

“product” means any good or service including immovable property, rights and obligations;

“professional diligence” means the standard of skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and, or the general principle of good faith, in the trader’s field of activity;

“regulated profession and regulated professional activity” has the same meaning assigned to it in the Mutual Recognition of Qualifications Act.

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

“transactional decision” means any decision taken by a consumer concerning whether, how and on what terms –

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

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

Unfair  
commercial  
practices.

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

(2) A commercial practice shall be unfair if:

(a) it is contrary to the requirements of professional diligence, and

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

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



assessed from the perspective of the average member of that group.

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

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

Misleading  
actions.

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

(a) it contains false information; or

(b) in any way, including its overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

(i) the existence or nature of the product;

(ii) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;

(iii) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product;

(iv) the price or the manner in which the price is calculated, or the existence of a specific price advantage;

(v) the need for a service, part, replacement or repair;

(vi) the nature, attributes and rights of the trader or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;

(vii) the consumer's rights, including the right to repair, replacement or reimbursement as provided in Part IX of the Act, or the risks he may face; or

(c) in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves:

(i) any marketing of a product, including comparative advertising, which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor; or

(ii) non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where

(a) the commitment is not aspirational but is firm and is capable of being verified, and

(b) the trader indicates in a commercial practice that he is bound by the code.

Misleading omissions.

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

(a) in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise;

or

(b) taking account of the matters described in paragraph (a), the trader hides, or provides in an unclear, unintelligible, ambiguous or untimely manner, such material information as referred to in that paragraph, or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

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

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

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

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

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

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

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

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

Aggressive commercial practices.

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

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

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

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

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

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

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

Infringements.

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

Control by code owners.

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

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

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

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

(a) any provision under the laws of Malta regulating contract in particular those governing the validity, formation or effect thereof;

(b) any rule relating to the health and safety aspects of products;

(c) any provision under the laws of Malta implementing a Community Directive or any provision under Community law regulating specific aspects of unfair commercial practices, in so far as those specific aspects are concerned;

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

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

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

**27.** Immediately after the new article 51J, there shall be added the following new sub-heading:

Addition of new sub-heading to the principal Act.

**“Title II**

**Illicit Schemes”.**

Deletion of article 52 of the principal Act.

**28.** Article 52 of the principal Act shall be deleted.

Addition of new article 52A to the principal Act.

**29.** Immediately after the deleted article 52 of the principal Act, there shall be added the following new article 52A:

“Chain letter schemes.

52A. (1) Any scheme of the type similar to a chain letter scheme, which is unconnected with the supply of goods or services, that is unfair to the majority of participants in the scheme, shall be prohibited.

(2) A scheme shall be unfair if:

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

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

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

Amendment of article 53 of the principal Act.

**30.** Article 53 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words “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”, there shall be substituted the words “Without prejudice to the provisions of Title I of this Part, a person who makes a representation that is false or misleading to a material degree concerning the profitability or risk or any other material aspect of any work from home scheme or any other similar scheme or activity however described”, and for the words “shall be guilty of an offence”, there shall be substituted the words “shall be guilty of an infringement”; and

(b) in subarticle (2) thereof, for the words “false or misleading in a material particular, shall be guilty of an offence”, there shall be substituted the words “false or misleading to a material degree, shall be guilty of an infringement”.

**31.** Article 54 of the principal Act shall be deleted.

Deletion of article 54 of the principal Act.

**32.** In article 55 of the principal Act, the words “the Civil Code,” shall be deleted.

Amendment of article 55 of the principal Act.

**33.** Immediately after article 55 of the principal Act there shall be added the following new article 55A:

Addition of new article 55A to the principal Act.

“Transitory provision.

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

(2) Where an act in breach of articles 48 to 53 as they were prior to 12<sup>th</sup> December, 2007 happened before the said date, but no prosecution was commenced by the said date, the provisions of this Part as in force from the 12<sup>th</sup> December, 2007 shall apply, as if such act happened after the said date.”

**34.** In article 56 of the principal Act, for the words “an EEA State” wherever they appear, there shall be substituted the words “a Member State”.

Amendment of article 56 of the principal Act.

**35.** In article 71 of the principal Act, for the words “any EEA State”, there shall be substituted the words “any Member State”.

Amendment of article 71 of the principal Act.

**36.** In the definition of “producer” in subarticle (1) of article 72 of the principal Act, for the word “Malta” there shall be substituted the words “a Member State”.

Amendment of article 72 of the principal Act.

**37.** Subarticle (2) of article 85 of the principal Act shall be deleted and the current subarticle (1) shall be renumbered as the whole article 85.

Amendment of article 85 of the principal Act.

**38.** Immediately after article 93 of the principal Act, there shall be added the following new articles:

Addition of new articles 93A and 93B to the principal Act.

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

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

Purpose of this Part.

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

Amendment of article 94 of the principal Act.

**39.** Article 94 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words “of his own initiative or on a written application to him by a qualifying body,” there shall be substituted the words “whether or not in conjunction with a decision finding an infringement under article 14A, of his own initiative or on a written application to him by a qualified entity,”;

(b) for paragraph (b) of subarticle (1) thereof, there shall be substituted the following:

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

(c) in paragraph (c) of subarticle (1) thereof, immediately after the words “requiring any person to take any measures specified in the compliance order,” there shall be inserted the words “including the making of a corrective statement,”

(d) in paragraph (d) of subarticle (1) thereof, immediately after the words “committing an offence” there shall be inserted the words “or an infringement”;



(e) subarticles (2), (3) and (4) thereof shall be renumbered as subarticles (5), (6) and (7) respectively;

(f) immediately after subarticle (1) thereof, there shall be inserted the following new subarticles:

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

(3) Where the qualified entity is from another Member State, the Director shall treat the list of qualified entities published by the European Commission as conclusive proof of the legal capacity of the legal entity to present such written application in Malta.

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

(g) subarticle (5) as renumbered thereof shall be amended as follows:

(i) in paragraph (b) thereof, for the words “information about the right to institute an action before the court” there shall be substituted the words “information about the right to file an application before the Appeals Board”;

(ii) in paragraph (c) thereof, for the words “qualifying body” there shall be substituted the words “qualified entity”;

(iii) immediately after paragraph (c) thereof, there shall be added the following new paragraph:

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

(h) in subarticle (7) as re-numbered thereof, for the words “qualified body” there shall be substituted the words “qualified entity”; and

(i) immediately after subarticle (7) as re-numbered thereof, there shall be added the following new subarticle:

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

Amendment of article 95 of the principal Act.

**40.** Article 95 of the principal Act shall be amended as follows:

(a) for the words “qualifying body” wherever they appear in the article, there shall be substituted the words “qualified entity”; and

(b) in subarticle (3) thereof, for the words “institute an action before the Courts of Magistrates in their civil jurisdiction”, there shall be substituted the words “file an application before the Appeals Board”.

Amendment of article 97 of the principal Act.

**41.** Article 97 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words “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” there shall be substituted the words “within fifteen days from notification of the compliance order, appeal from the said order by application before the Appeals Board for the revocation or amendment of the compliance order”;

(b) for subarticle (2) thereof, there shall be substituted the following:

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

(c) in subarticle (3) thereof, for the words “Where an action is instituted”, there shall be substituted the words “Where an appeal is filed,” and for the words “the court” wherever they appear in the subarticle, there shall be substituted the words “the Appeals Board”; and

(d) in subarticle (4) thereof, for the words “may not institute an action before the court” there shall be substituted the words “may not appeal before the Appeals Board”.

**42.** For article 98 of the principal Act there shall be substituted the following: Substitution of article 98 of the principal Act.

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

**43.** For article 101 of the principal Act there shall be substituted the following: Substitution of article 101 of the principal Act.

“101. (1) The Director may, 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, require by notice in writing any person -

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

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

(2) Publication shall be made in at least two daily newspapers and if appropriate, in any other medium of communication within seven days from receipt of the notice and it shall be at the expense of the person served with such notice. Where such publication is not effected as aforesaid, the Director 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.”

**44.** In subarticle (1) of article 102 of the principal Act for the words “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” there shall be substituted the words “in writing Amendment of article 102 of the principal Act.

authorise a public officer, or with the consent of the Minister, any other person employed by a body corporate established by law, to perform any of his functions or exercise any power granted to him under this Act. Any such officer or person shall”.

Amendment of article 105 of the principal Act.

**45.** Article 105 shall be amended as follows:

(a) in paragraph (a) thereof, immediately after the words “or a public officer” there shall be added the words “or an authorised person”;

(b) in paragraph (b) thereof, for the words “or a public officer in the course of his duties under this Part,” there shall be substituted the words “or a public officer or an authorised person in the course of his duties under this Part; or”; and

(c) immediately after paragraph (b) thereof, there shall be added the following new paragraph:

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

Amendment of article 106 of the principal Act.

**46.** Article 106 of the principal Act shall be amended as follows:

(a) subarticles (1) and (3) thereof shall be deleted;

(b) subarticle (2) shall be renumbered as the whole article 106; and

(c) in article 106 as renumbered, for the words “on conviction be liable to a fine (*multa*) or not less than one hundred liri (€232.94) and not more than ten thousand liri (€23293.74).”, there shall be substituted the words “on conviction be liable to a fine (*multa*) or not less than two hundred liri (€465.87) and not more than twenty thousand liri (€46587.47).”

Addition of new article 106A to the principal Act.

**47.** Immediately after article 106 of the principal Act, there shall be added the following new article 106A:

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

(2) An administrative fine imposed for an infringement under subarticle (1) shall not be less than two hundred liri (€465.87) and not more than twenty thousand liri (€46587.47):

Provided that in the case of non-compliance with a compliance order the Director may also impose a daily fine of not more than one hundred liri (€232.94) for each day of non-compliance.

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

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

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

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

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

(7) If after the lapse of the period during which submissions may be made in accordance with subarticle (5) the Director considers that the person concerned has not given any valid proof or reasons to demonstrate that the administrative fine referred to in subarticle (5) should not be

imposed, the Director shall impose an administrative fine in accordance with this Act and shall give notice in writing to the person concerned specifying the nature of the infringement and the amount of the administrative fine due:

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

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

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

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

Addition of new articles 107A and 107B to the principal Act.

**48.** Immediately after article 107 of the principal Act, there shall be added the following new articles:

“Order by the Director.

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

Refund of monies paid.

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

Substitution of article 108 of the principal Act.

**49.** For article 108 of the principal Act, there shall be substituted the following:

“Prescription  
for offences  
and  
administrative  
infringements.”

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

**50.** In article 109 of the principal Act, for the words “any public officers”, there shall be substituted the words “any public officer or any authorised person”. Amendment of article 109 of the principal Act.

**51.** In subarticle (1) of article 110 of the principal Act, for the words “Where an order or notice” there shall be substituted the words “Where a decision, order, measure or notice”. Amendment of article 110 of the principal Act.

**52.** Immediately after Article 110 of the principal Act, there shall be added the following new Part: Addition of new Part XII to the principal Act.

## “PART XII

### Consumer Affairs Appeals Board

“Consumer  
Affairs  
Appeals  
Board.

110A. (1) There shall be an Appeals Board, to be known as the Consumer Affairs Appeals Board which shall have jurisdiction to hear and determine appeals from decisions, orders or measures of the Director as provided in this Act.

(2) The Consumer Affairs Appeals Board shall be appointed by the Prime Minister, and shall be composed of:

(a) a Chairperson who shall be an advocate with at least seven years practice; and

(b) two other members who because of their experience, qualifications or activities are considered by the Prime Minister as able to properly assess the fairness or otherwise of commercial practices from a consumer’s and a trader’s perspective.

(3) The Chairperson and the other members of the Appeals Board shall be appointed for a term of three years and shall be eligible for re-appointment.

(4) The Appeals Board shall be independent in the performance of its functions.

(5) The Chairperson and members of the Appeals Board may be challenged or abstain for any of the reasons for which a judge may be challenged or abstain in accordance with the Code of Organization and Civil Procedure. In such a case the Prime Minister shall appoint a person, having the qualifications of the Chairperson or member challenged or abstaining, to sit in substitution.

(6) A member of the House of Representatives or of the European Parliament or of a local council shall be disqualified from being appointed or continuing to be the Chairperson or a member of the Appeals Board for as long as he holds that office.

(7) The Chairperson or member of the Appeals Board may only be removed from office by the Prime Minister on grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming a member of the Appeals Board. In doing so the Prime Minister shall lay before the House of Representatives a statement giving the reasons for the removal of the said member.

(8) The Prime Minister shall designate a person to serve as secretary to the Appeals Board and who shall serve in such a capacity in accordance with the ethical standards appropriate to his/her position.

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

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

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

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

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



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

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

Appeals  
against an  
administrative  
fine  
imposed by  
the Director.

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

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

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

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

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

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

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

Decisions of  
the Appeals  
Board.

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

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

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

Procedure of  
the Appeals  
Board.

110E. (1) In the exercise of its functions the Appeals Board may summon any person to appear before it and give evidence and produce documents, and the Chairman of the Appeals Board shall have the power to administer the oath.

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

(3) The Appeals Board in order to assist it in the exercise of its functions may appoint independent and impartial experts to advise it on any issue that may be relevant to any appeal lodged before it. In such cases the Appeals Board shall be entitled to make both provisional and final orders in respect of the payment of the costs and fees of such experts by any of the parties to the appeal.

(4) The Appeals Board in the exercise of its functions shall have the same powers as are competent to the First Hall, Civil Court according to law.

(5) The Minister may subject to the provisions of this Act, by regulations prescribe the procedure to be followed before the Appeals Board, and subject thereto and to any other provisions of this Act, the Appeals Board may regulate its own procedure.

(6) The Minister may, with the concurrence of the Minister responsible for finance by regulations made under this Act, establish any such fees as are considered to be necessary in relation to any proceedings before the Appeals Board.

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

Appeal to the  
Court of  
Appeal.

110F. (1) Any party to an appeal to the Appeals Board including the Director, who feels aggrieved by a decision of the Appeals Board, may on points of law and, or on grounds of natural justice appeal to the Court of Appeal (Inferior Jurisdiction) as constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court within fifteen days from the date of the decision of the Appeals Board.

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

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

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

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

110G. (1) Without prejudice to article 97 (3), any decision, order or measure of the Director pending an appeal whether before the Appeals Board or the Court of Appeal, shall stand and shall be adhered to by all the parties to whom the decision, order or measure applies.

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

Addition of new First Schedule to the principal Act.

**53.** Immediately after article 111 of the principal Act, there shall be added the following new First Schedule:

**“First Schedule**

**(Article 51B (4))**

**Commercial Practices which are *ipso jure* unfair**

**Misleading commercial practices**

1. Claiming to be a signatory to a code of conduct when the trader is not.
2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.
4. Claiming that a trader, including his/her commercial practices, or a product has been approved, endorsed or authorised by a public or private body when he/she/it has not, or making such a claim without complying with the terms of the approval, endorsement or authorisation.
5. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he/she will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).

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

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

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

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

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

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

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

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

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

14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to

receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.

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

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

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

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

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

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

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

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

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

#### **Aggressive commercial practices.**

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

25. Conducting personal visits to the consumer’s home ignoring the consumer’s request to leave or not to return except in circumstances

and to the extent justified, under national law, to enforce a contractual obligation. This is without prejudice to article 5A of the Doorstep Contracts Act.

Cap. 317.

26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation. This is without prejudice to Regulations 8 and 9 of the Distance Selling Regulations (L.N. 186 of 2001) and the Data Protection Act (Cap. 440) and the Processing of Personal Data (Electronic Communications Sector) Regulations (L.N. 16 of 2003).

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

28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. This provision is without prejudice to Rule 6 of the Broadcasting Code For The Protection of Minors, 2000 (L.N. 160 of 2000)

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

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

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

- there is no prize or other equivalent benefit, or

- taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.”

**54.** Immediately after the new First Schedule to the principal Act, there shall be added the following new Second Schedule:

Addition of new Second Schedule to the principal Act.

**“Second Schedule**

**(Article 106A (3))**

**Administrative fines**

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

**Infringements under Articles 51F, 52A and 53**

2. For infringements under articles 51F, 52A and 53, the basic amount of the fine shall be one thousand liri (€2329.37);

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

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

3. The Director may impose a higher administrative fine than the basic amount where there are aggravating circumstances, having regard to the gravity and duration of the infringement and, or the amount of gains improperly made as a result of the infringement.

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

- where the infringement is an unfair commercial practice listed in the First Schedule, the basic amount shall be increased by a sum not less than seven hundred and fifty liri (€1747.03) and not more than two thousand liri (€4658.75);

- in the case of a second or subsequent infringement, the basic amount shall be increased by one thousand liri (€2329.37) for each and every subsequent infringement;

- where the practice or scheme constituting the infringement is the principal means by which the trader runs or operates his business, the basic amount shall be increased by a sum not less than seven hundred and fifty liri (€1747.03) and not more than two thousand liri (€4658.75);



- where the practice or scheme constituting the infringement is specifically targeting vulnerable consumers, the basic amount shall be increased by one thousand liri (€2329.37);

- where the unfair commercial practice is accompanied by any of the factors listed in article 51E (2) of the Act, the basic amount shall be increased by a sum not less than seven hundred and fifty liri (€1747.03) and not more than two thousand liri (€4658.75).

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

- where the person concerned provides evidence that he/she terminated the unfair commercial practice constituting the infringement as soon as the Director commenced investigations under article 14A of the Act, the basic amount shall be decreased by not more than twenty *per centum*;

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

6. The final amount of the administrative fine shall not, in any event, exceed twenty thousand liri (€46587.47) or be lower than two hundred liri (€465.87).

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

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

#### **Infringements under Article 12.**

8. For the infringement referred to in article 12, the amount of the fine shall not be less than two thousand liri (€4658.75) and not more than five thousand liri (€11646.87).

#### **Infringements under Article 14B.**

9. For the infringement referred to in article 14B, the amount of the fine shall not be less than two thousand liri (€4658.75) and not more than five thousand liri (€11646.87).

### **Infringements under Article 94.**

10. For the infringement referred to in article 94, the amount of the fine shall not be less than two thousand liri (€4658.75) and not more than ten thousand liri (€23293.73);

Provided that in the case of non-compliance with a compliance order the director may also impose a daily fine of not less than fifty liri (€116.47) and not more than one hundred liri (€232.94) for each day of non-compliance.”

## **Part II**

### **AMENDMENT OF THE COMMERCIAL CODE**

Amendment of the  
Commercial Code.  
Cap. 13.

**55.** This Part amends and shall be read and construed as one with the Commercial Code, hereinafter referred to as “the Code”.

Addition of new  
articles 32A and  
32B to the Code.

**56.** Immediately after article 32 of the Code, there shall be added the following new articles 32A and 32B:

“Permitted  
comparative  
advertising.

**32A.** (1) Traders shall not engage in any comparative advertising.

(2) Notwithstanding the preceding subarticle, comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:

(a) it is not misleading within the meaning of article 32B or within the meaning of articles 51C and 51D of the Consumer Affairs Act;

(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 may include price;

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

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

(f) 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;

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

(h) it does not create confusion among traders, 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.

(3) 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.

(4) For the purposes of this article "comparative advertising" means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.

Misleading  
Advertising.

32B. (1) Traders shall not engage in any form of misleading advertising.

(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.”

Addition of new article 36A to the Code.

**57.** Immediately after article 36 of the Code, there shall be added the following new article 36A:

“Interpretation. 36A. For the purposes of this subtitle, “advertising” 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 “advertisement” shall be construed accordingly.”

Amendment of article 37 of the Code.

**58.** In subarticle (3) of article 37 of the Code, for the words “shall not be less than ten liri nor more than five hundred liri”, there shall be substituted the words “shall not be less than two hundred liri (€465.87) nor more than two thousand liri (€4658.75)”.

### Part III

#### AMENDMENT OF THE DOORSTEP CONTRACTS ACT

Amendment of the Doorstep Contracts Act. Cap. 317.

**59.** This Part amends and shall be read and construed as one with the Doorstep Contracts Act, hereinafter referred to as “the principal Act”.

Amendment of article 4 of the principal Act.

**60.** In subarticle (4) of article 4 of the principal Act, immediately after the words “or has been convicted of any offence” there shall be added the words “or found guilty of any infringement”.

**61.** For article 5A of the principal Act there shall be substituted the following:

Substitution of article 5A of the principal Act.

“A person engaged in door-to-door trading to leave if requested to do so. 5A. (1) 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.

(2) Without prejudice to the provisions of Title I of Part VII of the Consumer Affairs Act, 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 liri (€1164.67).”

**62.** Immediately after article 14 of the principal Act, there shall be added the following two new articles 14A and 14B:

Addition of new articles 14A and 14B to the principal Act.

“Infringements. 14A. Any person who fails to comply with the provisions of this Act other than articles 5 and 5A, which failure constitutes an infringement against this Act, shall be liable to an administrative fine imposed by the Director in terms of provisions of the Consumer Affairs Act of not less than two hundred liri (€465.87) and not exceeding two thousand liri (€4658.75).

Prescription for offences and administrative infringements. 14B. The prosecution of an offence or the initiation of administrative proceedings for an infringement of a provision of this Act shall be prescribed by the lapse of three years from the date on which the offence or infringement is alleged to have been committed.”

**63.** Immediately after article 15 of the principal Act, there shall be added the following new article 15A:

Addition of new article 15A to the principal Act.

“Purpose of this Act. 15A. The purpose of this Act is partly to implement the provisions of Council Directive 85/577/EEC of the 20<sup>th</sup> December, 1985 to protect the consumer in respect of contracts negotiated away from business premises and the respective provisions of this Act shall be applied and interpreted accordingly.”

## **Objects and Reasons**

The main object of the Bill is to amend the Consumer Affairs Act, the Commercial Code, and Doorstep Contracts Act in order to address Malta's obligations as a Member State to ensure the proper transposition of a number of EC Directives, principally Directive 2005/29/EC of the European Parliament and of the Council of the 11<sup>th</sup> May 2005 concerning unfair business-to-consumer commercial practices in the internal market.