L.N. 36 of 2005

MALTA FINANCIAL SERVICES ACT (CAP. 330)

Distance Selling (Retail Financial Services) Regulations, 2005

IN exercise of the powers conferred by article 20A of the Malta Financial Services Authority Act, the Prime Minister and Minister of Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:-

Citation and date of commencement.

1. (1) These regulations may be cited as the Distance Selling (Retail Financial Services) Regulations, 2005.

(2) These regulations shall come into force on the 4th February, 2005.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires -

"the Act" means the Malta Financial Services Authority Act; Cap. 330.

" the Commission" means the Commission of the European Community;

"Companies Act" means Act No. XXV of 1995; Cap. 386.

" the competent authority" means the Malta Financial Services Authority as established by the Act;

"consumer" means any natural person who, in a distance contract acts for purposes which fall outside the trade, business or profession of such person;

"distance contract" means any contract concerning a financial service concluded between a supplier and a consumer under an organised distance sales or service-provision scheme run by the supplier, who, for the purpose of that contract, makes exclusive

use of one or more means of distance communication up to and including the time at which the contract is concluded;

"Distance Marketing Directive" means Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC;

"durable medium" means any instrument which enables the consumer to store information addressed personally to the consumer in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored, including in particular floppy discs, CD-ROMs, DVDs and the hard drive of the consumer's computer on which the electronic mail is stored, but excluding Internet websites unless these otherwise fall within this definition of a durable medium;

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

"European Community" means the organisation established by the Treaty of Rome in 1957 and amended institutionally and otherwise in 1986 by the Single European Act, in 1993 by the Treaty on European Union, in 1997 by the Treaty of Amsterdam and in 2001 by the Treaty of Nice and as amended by accession agreements and as may be further amended from time to time;

"financial service" means any service of a banking, credit, insurance, personal pension, investment or payment nature and shall include all services the carrying out of which requires a licence or other authorisation from the competent authority or which otherwise fall under its supervisory functions;

"initial service agreement" means a primary agreement from which secondary agreements may result such as but not limited to:–

(i) the opening of a bank account;

(ii) acquiring a credit card; or

(iii) concluding a portfolio management contract;

"intermediary" refers to a person who, acting as an intermediary, has been involved to a relevant or material degree in the conclusion of a distant contract, and this irrespective of his legal status or relationship with the supplier;

"list of qualified entities" means the list compiled and updated by the Commission and published in the Official Journal of the European Communities listing the qualified entities in Member States and EEA States in accordance with Article 4 of the Directive 98/27/EC of the European Parliament and of the Council of 19th May 1998 on injunctions for the protection of consumer interests;

"means of distance communication" refers to any method which, without the simultaneous physical presence of the supplier and the consumer, may be used for the distance marketing of a service between those parties, including unaddressed printed matter, addressed printed matter, standard letters, press advertising with orders, catalogues, telephone with human intervention, telephone without human intervention (automatic calling machines, audiotext), radio, videophone (telephone with screen), videotext (microcomputer and telephone screen) with keyboard or touch screen, electronic mail, facsimile machine (fax) and television (teleshopping);

"Member State" means a member of the European Community;

"Minister" means the Minister responsible for financial regulation;

"personal pension arrangement" means any savings arrangement for retirement which is supplemental to a State pension or an occupational pension scheme being a pension arrangement offered through the employer;

" professional" means any person engaged in work:

(a) involving the exercise of discretion and judgment in its performance;

(b) requiring knowledge of an advanced type in a field of learning; and

(c) including but not limited to persons authorised to provide expert assistance with investment, estate, retirement and financial planning; employee benefits; business and

compensation planning; and life, health, disability, and long-term care insurance;

"qualified entity" means:

(a) a registered consumer association within the meaning of Part IV of the Consumer Affairs Act; Cap. 378.

(b) one or more independent public bodies, having a legitimate interest in ensuring the protection of the collective interests of consumers of financial services by distance contracts in other Member States or EEA States in which such bodies exist;

(c) voluntary organisations in other Member States or EEA States 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;

(d) organisations recognised by the competent authority as collectively representing professional financial service suppliers; or

(e) any qualified entity from a Member State or EEA State included in the list of qualified entities;

"supplier" means any natural or legal person providing a financial service at a distance by virtue of a distance contract, including any person involved as an intermediary in any of the marketing stages of the distance contact.

(2) Words and expressions used in these regulations which are also used in the Act shall have the same meanings as in the Act.

Object.

3. (1) The object of these regulations is to implement the provisions of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC, and shall be interpreted and applied accordingly.

(2) Regulations 15 to 23 of these regulations implement the provisions of Directive 98/27/EC of the European Parliament and of the Council of 19th May 1998 on injunctions for the protection of consumer interests, as applicable to the distance marketing of consumer financial services and shall be interpreted and applied accordingly.

Scope.

4. (1) These regulations apply to any distance contract service provision scheme organised by a financial services supplier, carrying on financial services activities in or from Malta, and accordingly do not apply to services provided on a strictly one-off or occasional basis or to services falling outside a commercial structure dedicated to the conclusion of distance contracts.

(2) Where a distance contract for financial services does not comprise an initial service agreement but comprises successive operations or a series of separate operations of the same nature performed over time between the same contractual parties, the provisions of regulation 5 apply only when the first operation is performed. Where, however, no operation of the same nature is performed for more than one year, the next operation will be deemed to be the first in a new series of operations and, accordingly, regulation 5 shall apply.

(3) Where a distance contract for financial services comprises an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the provisions of these regulations shall apply only to the initial agreement.

Prior information to be provided to consumer.

5. (1) A supplier shall, in a clear and comprehensible manner appropriate to the means of distance communication used, and in reasonable time before the consumer is bound by a distance contract or offer, provide the consumer with information concerning the supplier, the financial services involved in the offer, the nature of the distance contract and the forms of redress available, as follows:-–

(a) Information regarding the supplier:

(i) the identity and the main business of the supplier, the full geographical or main business address where the supplier is established and any other geographical or business address relevant for the customer's relations with the supplier;

(ii) the identity of the representative of the supplier established in the consumer's country of residence, being within a Member State or EEA State and the geographical or full business address relevant for the customer's relations with the representative in such State, if such a representative exists;

(iii) when the consumer's dealings are with any professional other than the supplier, the identity of this professional, the capacity in which he is acting in his dealings with the consumer, and the full geographical and main

business address relevant for the consumer's relations with such professional;

(iv) where the supplier is a body corporate registered in a companies register, or in any case the supplier is registered in a trade or similar public register, the register in which the supplier is entered and the supplier's registration number or an equivalent means of identification in that register; and

(v) where the supplier's activity is subject to a licence or any other authorisation scheme, the particulars of the relevant supervisory authority;

(b) Information regarding the financial service:

(i) a description of the main characteristics of the financial service which is the subject of the offer;

(ii) the total price to be paid by the consumer to the supplier for the financial service, including all related fees, charges and expenses, and all taxes paid via the supplier or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it;

(iii) where relevant, clear and specific notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the supplier's control and that historical performances are no indicators for future performances;

(iv) notice of the possibility that other taxes and, or costs may exist that are not imposed by or paid through the supplier;

(v) any limitations of the period for which the information provided is valid;

(vi) the arrangements for payment and for performance; and

(vii) any specific additional cost for the consumer of using the means of distance communication, if such additional cost is charged;

(c) Information regarding the distance contract:

(i) the existence or absence of a right of withdrawal or cancellation in accordance with regulation 7 and, where the right of withdrawal exists, its duration and the conditions for exercising it, including information on the amount which the consumer may be required to pay on the basis of sub-regulation (1) of regulation 8, as well as the consequences of non-exercise of the right of withdrawal;

(ii) the minimum duration of the distance contract in the case of financial services to be performed permanently or recurrently;

(iii) information on any rights the parties may have to terminate the contract early or unilaterally by virtue of the terms of the distance contract, including any penalties imposed by the contract in such cases;

(iv) practical instructions for exercising the right of withdrawal indicating, *inter alia,* the address where the notification of a withdrawal should be sent;

(v) the Member State or EEA State whose laws are taken by the supplier as a basis for the establishment of relations with the consumer prior to the conclusion of the distance contract;

(vi) any choice of law or choice of jurisdiction clause;

(vii) in which language, or languages, the contractual terms and conditions, and the prior information referred to in this regulation are supplied, and furthermore in which language, or languages, the supplier, with the agreement of the consumer, undertakes to communicate during the duration of this distance contract;

(d) Information regarding the right to redress:

(i) details regarding the procedure for lodging a complaint to the supplier, the relevant contact details of the office responsible for complaints;

(ii) that the Consumer Complaints Manager offers an out-of-court complaint mechanism for the consumer a party

to the distance contract, the contact details of the relevant office and the methods for gaining access thereto;

(iii) the existence of any other out-of-court redress mechanism available to the consumer and methods for gaining access thereto; and

(iv) any compensation schemes or other compensation arrangements or guarantees funds as may be applicable.

(2) The information required in sub-regulation (1) of this regulation shall be provided with due regard to the principles of good faith in commercial transactions, and any legislation governing the protection of those who are unable to give their consent, such as minors. The supplier must make clear the commercial purpose of the information given.

(3) Where the distance contract relates to a long term business contract of insurance the information required in sub-regulation (1) of this regulation shall be additional and without prejudice to the provisions of the Insurance Business (Long Term Business Contract Statutory Notice) Regulations, 2000.

L.N. 106 of 2000.

(4) Where the distance contract relates to a linked long term business contract of insurance, the information required in sub-regulation (1) of this regulation shall be additional and without prejudice to the provisions of the Investment Services Act (Linked Long Term Contracts of Insurance Statutory Notice) Regulations, 2002.

L.N. 354 of 2002.

(5) (a) In the case of voice telephony communications the identity of the supplier and the commercial purpose of the call initiated by the supplier shall be made explicitly clear at the beginning of any conversation with the consumer:

Provided that, subject to the explicit consent of the consumer, only the following information shall need to be given:–

(i) the identity of the person in contact with the consumer and that person's link with the supplier,

(ii) a description of the main characteristics of the financial service,

(iii) the total price to be paid by the consumer to the supplier for the financial service including all taxes paid via the supplier

or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it;

(iv) notice of the possibility that other taxes and, or costs may exist that are not paid via or imposed by the supplier;

(v) the existence or absence of a right of withdrawal in accordance with regulation 7 and, where the right of withdrawal exists, its duration and the conditions for exercising it, including information on the amount which the consumer may be required to pay on the basis of sub-regulation (1) of regulation 8.

(b) The supplier shall inform the consumer in the telephone communication that other information is available at the latter's request and shall explain the nature of this information. In any event, the supplier shall provide the full information when fulfilling the obligations under regulation 6.

(6) During the pre-contractual phase, the supplier shall ensure that information on contractual obligations to be communicated to the consumer is in conformity with the contractual obligations which would result from the law presumed to be applicable to the distance contract if such distance contract were concluded.

(7) The provisions of this regulation shall be without prejudice to any other legislation, regulation or rules governing financial services which provides for prior information requirements additional to those listed in this regulation.

Written confirmation of information and contractual terms.

6. (1) The supplier shall communicate to the consumer all the contractual terms and conditions and the information referred to in regulation 5 in written form or on another durable medium available and accessible to the consumer in reasonable time before the consumer is bound by any distance contract or offer.

(2) Where the distance contract has been concluded at the consumer's request using a means of distance communication which does not permit the provision of the information as required under sub-regulation (1), the supplier shall fulfil his obligations under this sub-regulation immediately after the conclusion of the distance contract.

(3) Where the supplier has not fulfilled the obligations under sub-regulations (1) or (2) hereof, the distance contract shall, at the option of the consumer, be annullable by and unenforceable against the consumer.

(4) The consumer may, at any time during the contractual relationship, request to receive the contractual terms and conditions of the distance contract in written form, which the supplier must duly and promptly provide.

(5) The consumer may, at any time during the contractual relationship, change the means of distance communication used with the supplier unless this is incompatible with the distance contract concluded or the nature of the financial service supplied.

Right of withdrawal.

7. (1) In every distance contract, a consumer shall have a period of fourteen calendar days to withdraw from the distance contract without incurring any penalty and without having to give any reason:

Provided that this period shall be extended to thirty calendar days in distance contracts relating to life insurance covered by Directive 90/619/EEC and to personal pension arrangements.

(2) The period for exercising this right of withdrawal shall commence:–

(a) from the day of the conclusion of the distance contract, except in the case of life assurance contracts covered by Directive 90/619/EEC, where the time limit commences from the time when the consumer is informed in writing on paper or on another durable medium available and accessible to the consumer that the distance contract has been concluded, or

(b) from the day on which the consumer receives the contractual terms and conditions and the information in accordance with sub-regulations (1) and (2) of regulation 6, where this date is later than the date referred to in paragraph (a) hereof.

(3) The right of withdrawal shall not apply to:–

(a) financial services whose price depends on fluctuations in the financial market outside the suppliers control, which may occur during the withdrawal period, such as services related to foreign exchange, money market instruments, transferable securities, units in collective investment undertakings, financial-futures contracts, including equivalent cash-settled instruments, forward interest-rate agreements, interest-rate, currency and equity swaps and options to acquire or dispose of any instruments referred to in this point including equivalent cash-settled instruments and including in particular options on currency and on interest rates;

(b) travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration;

(c) distance contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises the right of withdrawal.

(4) Where the consumer exercises the right of withdrawal, the consumer shall, before the expiry of the relevant deadline, notify this withdrawal to the supplier by means which can be proved in accordance with national law and in accordance with the practical instructions given to the consumer in accordance with sub-paragraph (iv) of paragraph (c) of sub-regulation (1) of regulation 5. The relevant deadline shall be deemed to have been observed if the notification, if it is on paper or on another durable medium available and accessible to the recipient, is dispatched before the deadline expires.

(5) This regulation does not apply to credit agreements cancelled under the conditions of article 6(4) of Directive 97/7/EC or article 7 of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.

(6) Where to a distance contract of a given financial service another distance contract has been attached concerning services provided by the supplier or by a third party on the basis of an agreement between the third party and the supplier, this additional distance contract shall be cancelled, without any penalty, if the consumer exercises the right of withdrawal as provided for in sub-regulation (1) of regulation 7.

(7) The provisions of this regulation are without prejudice to the provisions of any other laws or regulations governing the cancellation or termination or non-enforceability of a distance contract or the right of a consumer to fulfil the contractual obligations before the time fixed in the distance contract. This applies irrespective of the conditions for and the legal effects of the winding-up of the distance contract.

Payment of the service provided before withdrawal.

8. (1) When the consumer exercises the right of withdrawal under sub-regulation (1) of regulation 7 the consumer may only be required to pay, without any undue delay, for the service or benefit actually provided by the supplier in accordance with the distance contract, in any case the amount payable by the consumer shall not

(a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the distance contract; or

(b) in any case be such that it could be construed as a penalty.

(2) The performance of any distance contract may only begin after the consumer has given prior approval.

(3) Where a notice of cancellation in terms of these regulations operates to cancel an insurance contract, the consumer shall not be required to pay any amount of money upon or consequent to the cancellation:

Provided that any benefit under the policy which the insurer has paid to the person serving the notice shall be refunded by such person to the insurer.

(4) The supplier may not require the consumer to pay any amount on the basis of sub-regulation (1) unless the supplier can prove that the consumer was duly informed about the amount payable, in conformity with sub-paragraph (i) of paragraph (c) of sub-regulation (1) of regulation 5:

Provided that in no case may the supplier require such payment if the performance of the distance contract has already commenced before the expiry of the withdrawal period provided for in regulation 7(1) and without the consumer's prior request.

(5) The supplier shall, without any undue delay and no later than within thirty calendar days, return to the consumer any sums the supplier has received from the consumer in accordance with the distance contract, except for the amount referred to in sub-regulation (1). This period shall begin from the day on which the supplier receives the notification of withdrawal.

(6) The consumer shall return to the supplier any sums and, or property he has received from the supplier without any undue delay and no later than within thirty calendar days. This period shall begin from the day on which the consumer dispatches the notification of withdrawal.

Payment by card.

9. The consumer is entitled to cancel a payment made by credit or debit card where fraudulent use has been made of the consumer's payment card in connection with a distance contract to which these regulations apply. In any such instance, the consumer's bank account

shall be re-credited with all sums paid as a result of such fraudulent use or else such sums shall be returned to the consumer by some other means.

Unsolicited services.

10. (1) Without prejudice to any provisions on the tacit renewal of distance contracts, a consumer is not liable to pay a supplier for any unsolicited financial services supplied to the consumer without any prior request.

(2) A consumer may treat any unsolicited financial services supplied by a supplier as if they were an unconditional gift and any right of the supplier thereto shall be terminated.

(3) A supplier who makes a demand for payment, or asserts a present or prospective right to payment for financial services unsolicited by the consumer, shall be liable to an administrative penalty in terms of regulation 25.

(4) A supplier shall be liable to an administrative penalty in terms of regulation 25, if with a view to obtaining any payment for unsolicited financial services, the supplier:

(a) threatens to bring any legal proceedings against the consumer;

(b) places or causes to be placed the name of a consumer on a list of defaulters or debtors, or threatens to do so; or

(c) invokes or causes to be invoked any other collection procedure, against the consumer or threatens to do so.

Unsolicited communications.

11. (1) A supplier shall not make use of the following means of distance communication without obtaining the consumer's prior consent:–

(a) automated calling systems without human intervention (automatic calling machines); or

(b) fax machines.

(2) Means of distance communication which allow individual communications, excluding those referred to in sub-regulation (1), may be used as long as the consumer has not expressed his manifest objection thereto.

(3) If the supplier persists in addressing means of distance communications to a consumer after having been asked, even verbally,

by such consumer to desist, the supplier shall be liable to an administrative penalty in terms of regulation 25.

(4) The measures referred to in sub-regulations (1) and (2) shall not entail costs for consumers.

Out-of-court redress.

12. (1) A consumer who feels aggrieved in relation to a financial service provided at a distance may refer his complaint to the Consumer Complaints Manager who shall investigate such complaint in accordance with article 20 of the Act.

(2) The Consumer Complaints Manager shall, to the extent possible, assist and cooperate with bodies responsible for out-of-court settlement of disputes in Malta and in other Member States and EEA States in the resolution of local and cross-border disputes concerning financial services falling under these regulations.

Applications for compliance orders by qualified entities.

13. (1) Where a qualified entity wishes to seek a compliance order, it shall submit its written application to the competent authority. In its application, it must satisfy the competent authority 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 of the Member State or EEA State in which the injunction is sought. The competent authority shall only entertain a written application if the qualified entity shows to the satisfaction of the competent authority that the cessation of the infringement was not achieved within two weeks after the request for consultation was received.

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

(3) The competent authority shall, at the request of a qualified entity from Malta, communicate to the Commission the name and objects of such entities and that such qualified entity should be added to the list of qualified entities so as to facilitate the redress of inter-community infringements.

(4) Before proceeding for the issue of a compliance order under regulation 14, the competent authority shall, if it considers it to be possible and reasonable to do so, seek first to achieve voluntary compliance by the supplier and other persons involved, in accordance with these regulations or with any other law dealing with consumer rights and protection.

Issue of compliance orders.

14. (1) Where the competent authority feels it reasonably appropriate or necessary for the protection of consumers, it may, of its own initiative or on a written application to it by a qualified entity, issue a compliance order against a supplier, for one or more of the following purposes:

(a) ordering the deletion or alteration of particular clauses incorporated in a distance consumer contract which the competent authority considers as being unfair to consumers or as creating a significant imbalance between the rights and obligations of the contracting parties in a manner detrimental to consumers;

(b) ordering the incorporation of terms in a distance contract which the competent authority considers to be necessary for the better information or protection of consumers, or for preventing a significant imbalance between the rights and obligations of the parties in a manner detrimental to consumers;

(c) requiring any person to take any measures specified in the compliance order, within the time specified in the compliance order to ensure that these regulations are complied with;

(d) requiring any person to cease or desist from committing a breach of these regulations.

(2) The competent authority shall when issuing a compliance order under this regulation:–

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

(b) include with the compliance order, information about the right to institute an action before the Financial Services Tribunal in accordance with regulation 17; and

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

(3) No precautionary warrant or other order under any other law shall be issued by any court or tribunal restraining or restricting the competent authority from issuing a compliance order under these regulations.

Discretion of competent authority to issue a compliance order.

15. (1) It shall be at the discretion of the competent authority whether or not to issue a compliance order after a written request by a qualified entity has been made to it in terms of regulation 14.

(2) If the competent authority decides not to issue a compliance order after an application has been made to it by a qualified entity, it shall, within seven days from the date of its decision, notify in writing the qualified entity and the persons against whom the compliance order is requested with its decision stating the reasons therefor.

(3) A qualified entity may within fifteen days from the date of notification upon it of the decision of the competent authority not to issue a compliance order, institute an action before the Financial Services Tribunal for the issue of an order requiring the competent authority to issue a compliance order under regulation 14. The persons against whom the compliance order is requested to be made shall be parties to the suit, and it shall be the duty of the qualified entity to notify such persons accordingly.

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

Compliance order to take immediate effect.

16. A compliance order issued by the competent authority shall come into force with immediate effect.

Appeal from a compliance order.

17. (1) A person against whom a compliance order has been made, may, within fifteen days from receipt of notification of the compliance order, appeal in writing to the Financial Services Tribunal for the revocation or amendment of the compliance order, giving detailed grounds for the request. Such appeal may be made only on the following grounds:–

(a) the competent authority has, in its decision wrongly applied any of the provisions of this Act; or

(b) the decision of the competent authority constitutes an abuse of discretion or is manifestly unfair.

(2) The Financial Services Tribunal may confirm, change or cancel the compliance order on any terms or conditions it considers appropriate.

(3) Where an appeal is instituted under sub-regulation (1), the compliance order shall remain in force unless the Financial Services

Tribunal specifically orders that the compliance order shall be stayed pending the outcome of the appeal, subject to such conditions and amendments as it may determine. In any such instance, the competent authority may request the Financial Services Tribunal to make an interim compliance order, ordering that the compliance order shall, subject to such modifications as the competent authority may suggest, continue in force pending the final determination of the case instituted in accordance with sub-regulation (1). An interim compliance order shall expire upon the final determination of the case.

(4) Subject to this regulation, the provisions of article 21 of the Act shall govern appeals to the Tribunal.

Cases to be heard and determined with urgency.

18. Appeals instituted under sub-regulation (3) of regulation 15 and regulation 17 shall be heard and determined by the Financial Services Tribunal with urgency and as expeditiously as possible.

No need to prove actual loss, etc.

19. The competent authority, when issuing a compliance order under regulation 14, shall not be required to prove:–

(a) actual loss or damage; or

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

Competent authority may require publication.

20. (1) The competent authority may, for the better information of the public:

(a) publish a copy of the compliance order made under regulation 14 against any such person, in full or in part; and, or

(b) order any person to publish a corrective statement in relation to any contravention of these regulations.

(2) Publication in terms of sub-regulation (1) shall be made at the expense of the supplier or person concerned in at least two daily newspapers within seven days from receipt of the notice and shall be at the expense of the person served with such notice. Where such publication is not effected as aforesaid, the competent authority may proceed to effect publication itself, in which case it shall have the right to recover from the person on whom the notice is served, any expenses incurred, as a civil debt.

Delegation of powers of the competent authority.

21. The competent authority may in writing authorise a public or other officer to perform any of its functions in relation to the enforcement of these regulations or exercise any power granted to it

under these provisions. Any such officer shall when required, produce the written authorisation signed by the competent authority.

Entry of inspection.

22. (1) For the purpose of discharging its functions under these regulations, the competent authority may –

(*a*) enter and search any premises, other than premises used exclusively as a place of residence;

(*b*) make any inspection, conduct any test and take any books, documents or records however kept or stored:

Provided that no entry and search shall be effected between seven in the evening and seven in the morning, unless the competent authority has reason to believe that delay could cause the loss of necessary information.

(2) Where the competent authority takes any book, document or record under this regulation, the competent authority may retain that book, document or record –

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

(*b*) if it is required as evidence in proceedings for a breach of these regulations.

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

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

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

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(6) In the course of any entry and search under these regulations, the competent authority may request the assistance of the Police.

Obtaining information.

23. (1) The competent authority may, for the purpose of discharging its functions under these regulations, require any person to provide any information in any manner, including:

(a) by answering any questions, orally or in writing; or

(b) by producing any books, documents or other records as the competent authority may consider to be necessary.

(2) Any such person shall promptly comply with any such request.

Failure to comply with regulations.

24. (1) A supplier, licensed or otherwise authorised to offer a financial service by the competent authority, shall be liable to an administrative penalty in terms of regulation 25 if the supplier, or the manager, secretary, director or other person responsible for the supplier's activity:–

(a) is responsible for behaviour specifically referred to in sub-regulations (3) and (4) of regulation 10 or in sub-regulation (3) of regulation 11;

(b) fails to observe any other provision in these regulations;

(c) fails to comply with a compliance order issued under these regulations; or

(d) refuses or fails to furnish information as required under these regulations or else provides false or misleading information.

CAA 105.

(2) A supplier, licensed or otherwise authorised to offer a financial service by the competent authority, shall be liable to an administrative penalty if such supplier:–

(a) wilfully obstructs, assaults, threatens, resists or interferes with the competent authority or a public officer in the exercise of its duties under these regulations or attempts so to do; or

(b) uses threatening, abusive or insulting language to the representatives of the competent authority or a public officer in the course of duties delegated pursuant to the provisions of regulation 21.

Administrative penalties.

25. (1) In the event of liability arising in terms of regulation 24 the competent authority may by notice in writing and without recourse to a court hearing impose on the supplier, or the manager, secretary, director or other person responsible for the supplier's activity as, the case may be, an administrative penalty which may not exceed forty thousand liri.

(2) Within a period of thirty days beginning with the date of service of a notice imposing an administrative penalty in accordance with sub-regulation (2), a person upon whom the notice is served may appeal to the Financial Services Tribunal against the decision of the competent authority in accordance with article 21 of the Act.

(3) Where a notice as referred to in sub-regulation (2) has not been appealed or where such notice has been appealed within fifteen days of the determination of such appeal, the administrative penalty as contained in the notice or as reduced by the decision of the Financial Services Tribunal shall be due to the competent authority and upon the service of a copy of the notice or the decision as the case may be, by means of a judicial act on the person indicated in the notice or decision, the said notice or decision shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

Cap. 12.

Other administrative sanctions.

26. Nothing in these regulations shall prejudice or limit the exercise of the powers of the competent authority to take administrative measures or impose penalties under the Investment Services Act, the Banking Act, the Financial Markets Act, the Financial Institutions Act, the Insurance Business Act and the Insurance Brokers and other Intermediaries Act, against a licensed or authorized person who has contravened any of these regulations or has failed to satisfy or comply with any obligation or condition to which he may be subject under any of these Acts.

Cap 370.
Cap 371.
Cap 376.
Cap 403.
Cap 404.

Service of orders or notices.

27. (1) Where an order or notice is required or authorised to be served under these regulations it shall be served in any of the following manners:–

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

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

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

Burden of proof.

28. (1) Any contractual term or condition contained in a distance contract providing that the burden of proof of the supplier of all or part of the obligations incumbent on the supplier pursuant to these regulations should lie with the consumer shall be an unfair term within the meaning of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

(2) Without prejudice to sub-regulation (5) of regulation 8, the burden of proof shall be placed on the supplier in any dispute relating to:–

(a) the content of the information supplied to the consumer in accordance with regulation 5;

(b) the consent of the consumer to the conclusion of any distance contract; and

(c) the compliance by the supplier with the time-limits prescribed under these regulations.

Imperative nature of regulations.

29. The rights conferred on consumers by these regulations may not in any way be waived by a consumer.

Transitional provisions.

30. These regulations may be applied to suppliers established in any Member State or EEA which has not yet transposed Directive 2002/65/EC and whose law has no obligations corresponding to those provided for in these regulations.

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Ippubblikat mid-Dipartiment ta' l-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*

Prezz 44ċ – *Price 44c*