I assent.

(L.S.)

EDWARD FENECH ADAMI
President

29th January, 2008

ACT No. II of 2008

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:-

Short title and commencement.

1. (1) The short title of this Act is the Consumer Affairs (Amendment) Act, 2008.

(2) Unless otherwise provided in its various parts, this Act shall be deemed to have come into force on the 12th December, 2007.

Part I

AMENDMENT OF THE CONSUMER AFFAIRS ACT

Amendment of the Consumer Affairs Act. Cap. 378.

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 long title of the principal Act.

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 Arrangment of 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
PART XI.	Enforcement	102-110
PART XII.	Consumer Affairs Appeals Board	110A-110G
PART XIII.	Miscellaneous	111
First Schedule	Commercial Practices which are *ipso jure* unfair	
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 12th December 2007, be construed as references to the Parts as now re-numbered.

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

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".

Amendment of article 2 of the principal Act.

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

(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 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th 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 substitued 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."

Addition of new article 7A to the principal Act.

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

"Power to issue guidelines.

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

Amendment to article 10 of the principal Act.

10. Article 10 of the principal Act shall be amended as follows:

(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."

Amendment of article 12 of the principal Act.

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

(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."

Amendment of article 14 of the principal Act.

14. Article 14 of the principal Act shall be amended as follows:

(a) in subarticle (1) therein, immediately after the words "convicted for an offence against" there shall be added the words "a provision of the Act or against"; and

(b) in subarticle (1) paragraph (b) thereof, for the words "one hundred liri" there shall be substituted the words "five hundred euros".

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

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

"Administrative 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."

Amendment of article 17 of the principal Act.

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

"(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)."

Amendment of article 22 of the principal Act.

18. Article 22 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, the words "eighteen working days" shall be substituted by the words "twenty days";

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

"(2) Independently of the amount of the claim an appeal shall always lie in the following cases:

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

(b) on any question of prescription; or

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

(c) for subarticle (3) thereof, there shall be substituted the following:

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

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

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

(e) immediately after subarticle (4) thereof, there shall be added the following new subarticles:

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

(6) The amount of the penalty shall be due and owing to the Government as a civil debt, liquidated and certain, and may be collected by the Registrar. The order referred to in subarticle (5) shall constitute an executive title within the meaning and for the purposes of Title VII of Book Second of the Code of Organization and Civil Procedure.

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

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

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

Addition of new article 25A to the principal Act.

19. Immediately after article 25 of the principal Act, there shall be added the following new article:

"Failure to comply with decisions.

25A. Any person who fails to comply with a decision of the Tribunal, or of the Court of Appeal, despite the lapse of more than three months from when that decision became final, shall be guilty of an offence against this Act; and shall be liable on conviction to a fine (*multa*) of not more than five hundred euros:

Provided that any prosecution for an offence under this article shall be without prejudice to the accused's obligation to comply with the decision of the Tribunal or the Court of Appeal.".

Amendment of article 36 of the principal Act.

20. 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 41 of the principal Act.

21. 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)".

Substitution of title to Part VI of the principal Act.

22. For the title to Part VI of the principal Act, there shall be substituted the new title "Unfair contract terms".

Amendment of article 45 of the principal Act.

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

"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."

Addition of new articles 47A to 47C to the principal Act.

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

"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.

25. 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 12th December 2007 be construed as references to the Parts as re-numbered.

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

26. 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.

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

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

28. 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.".

Addition of new sub-heading to the principal Act.

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

"Title II

Illicit Schemes".

Deletion of article 52 of the principal Act.

30. Article 52 of the principal Act shall be deleted.

Addition of new article 52A to the principal Act.

31. 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.

32. 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".

Deletion of article 54 of the principal Act.

33. Article 54 of the principal Act shall be deleted.

Amendment of article 55 of the principal Act.

34. In article 55 of the principal Act, the words "the Civil Code," shall be deleted.

Addition of new article 55A to the principal Act.

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

"Transitory provision.

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

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

Amendment of article 56 of the principal Act.

36. 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 71 of the principal Act.

37. 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 72 of the principal Act.

38. 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 85 of the principal Act.

39. 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.

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

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

"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 25th May 1999 on certain

aspects of the sale of consumer goods and associated guarantees and the provisions of this Part shall be applied and interpreted accordingly."

Amendment of article 94 of the principal Act.

41. 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."

42. Article 95 of the principal Act shall be amended as follows: Amendment of article 95 of the principal Act.

(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.

43. 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".

Substitution of article 98 of the principal Act.

44. For article 98 of the principal Act there shall be substituted the following:

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

Substitution of article 101 of the principal Act.

45. For article 101 of the principal Act there shall be substituted the following:

"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."

Amendment of article 102 of the principal Act.

46. 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 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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."

Amendment of article 109 of the principal Act.

52. 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 110 of the principal Act.

53. 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".

54. 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.

55. 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."

Addition of new Second Schedule to the principal Act.

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

"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 infringment.

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.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. 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".

Substitution of article 5A of the principal Act.

63. For article 5A of the principal Act there shall be substituted the following:

"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)."

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

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

"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."

Addition of new article 15A to the principal Act.

65. Immediately after article 15 of the principal Act, there shall be added the following new article 15A:

"Purpose of this Act.

15A. The purpose of this Act is partly to implement the provisions of Council Directive 85/577/EEC of the 20th 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."

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Passed by the House of Representatives at Sitting No. 611 of 23rd January, 2008.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives