

I assent.

(L.S.)

**MARIE LOUISE
COLEIRO PRECA
President**

30th October, 2015

ACT No. XXX of 2015

AN ACT to amend the Consumer Affairs Act, Cap. 378, and for any other matter consequential or ancillary thereto.

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

1. (1) The short title of this Act is the Consumer Affairs (Amendment) Act, 2015, and this Act shall be read and construed as one with the Consumer Affairs Act, hereinafter referred to as "the principal Act".

Short title and
commencement.
Cap. 378.

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

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

Amendment of
article 2 of the
principal Act.

(a) immediately before the definition "advertisement", there shall be added the following new definition:

" "ADR" means alternative dispute resolution;"

(b) immediately after the definition "registered consumer association" there shall be added the following new definition:

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" "sales contract" means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;" and

(c) immediately after the definition "services" there shall be added the following new definition:

" "services contract" means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;"

Amendment of article 7 of the principal Act.

3. Sub-article (1) of article 7 of the principal Act shall be amended as follows:

(a) in paragraph (f) thereof for the words "any other aspect of consumer credit arrangements." there shall be substituted the words "any other aspect of consumer credit arrangements; and"; and

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

"(g) to provide for any matters that may be required for the purpose of complying with any international obligations of Malta related to consumer affairs, in particular for the purpose of complying with any requirements however so described of the European Union."

Renumbering of Parts VI to XII of the principal Act.

4. Part VI of the principal Act entitled "Unfair contract terms", Part VII of the principal Act entitled "Unfair commercial practices and illicit schemes", Part VIII of the principal Act entitled "Liability for defective products", Part IX of the principal Act entitled "Sale of goods to consumers", Part X of the principal Act entitled "Compliance orders", Part XI of the principal Act entitled "Enforcement" and Part XII of the principal Act entitled "Miscellaneous" shall be re-numbered as Parts VII, VIII, IX, X, XI, XII and XIII respectively and any references to these Parts as they were prior to their re-numbering in any legislation shall as from the date of the coming into force of this provision be construed as references to the Parts as renumbered.

5. Immediately after article 43 of the principal Act, there shall be added the following new Part:

Addition of new Part VI to the principal Act.

"PART VI

Consumer Alternative Dispute Resolution

Interpretation.

43A. In this Part unless the context otherwise requires:

"this Part" includes any regulations made under this Part; and

"residual ADR entity" means any such entity as the Minister may, after consultation with the Council, designate to deal with any disputes that consumers may have with traders in relation to which there is no existing ADR entity in place competent to deal with such disputes.

Consumer right to access ADR procedures.

43B. Consumers shall have the right to have access to ADR procedures with regard to disputes that they may have with traders:

Provided that where there is no ADR entity which is competent to deal with the resolution of any such disputes, then such disputes shall be referred to any such residual ADR entity or entities as may from time to time be designated in accordance with this Part.

Residual ADR entity or entities.

43C. (1) The entity listed in the Third Schedule to this Act shall perform the function of a residual ADR entity. The Minister may, after consultation with the Council, by order designate any other entity or entities to undertake the function of a residual ADR entity or entities which entity or entities shall be listed in the Third Schedule:

Provided that the Minister may by order, after consultation with the Council, amend the said Schedule and in particular the Minister may appoint different entities to deal with different types of disputes:

Provided further that the Minister shall by order amend the said Schedule at the written request of the Council if he is satisfied that the Council considers that an entity that has been designated as a residual ADR entity does not satisfy or no longer satisfies one or more requisites under this Part.

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Role of the
Council as the
competent
ADR
regulatory
authority under
this Part.

(2) An entity designated to exercise the functions of a residual ADR entity shall, in doing so, act independently of the Council, other than in compliance with any legitimate orders, however so described, that the Council may impose to ensure that the aforesaid entity adheres to its obligations at law in the exercise of its role as a residual ADR entity.

43D. (1) The Council shall be the competent ADR regulatory authority and in the exercise of such a role the Council shall perform the following functions:

(a) determine whether an entity is qualified to act as an ADR entity;

(b) monitor the operations and conduct of ADR entities;

(c) ensure compliance by ADR entities with their obligations at law and ensure abidance by traders of their obligations at law with regard to ADR, and where necessary take any such measures as it may consider appropriate; and

(d) perform any other functions as the Minister may from time to time require it to undertake in relation to the conduct of ADR procedures in Malta.

(2) The Council shall in the exercise of its functions under this Part act independently and shall not take or seek instructions however so described from any other person.

(3) Unless provided otherwise at law, the Council in the exercise of its functions under this Part shall regulate its own procedure.

(4) The Council shall exercise its regulatory functions however so described through its Chairman and, or through any one or more of such public officers and, or such public entity or entities as may from time to time be authorized by the Council for that purpose:

Provided that no such functions shall be exercised by any entity which is or may have been designated to act as a residual ADR entity, or else is or was an ADR entity.

Application of certain enforcement provisions of Part XII.

43E. The provisions of articles 102, 103, 104, 105 and 106 of Part XII, in so far as they relate to the exercise of the powers of enforcement of the Director General in the performance of his regulatory functions, shall similarly apply to the Chairman of the Council when acting to ensure compliance with applicable consumer ADR requirements as prescribed by law or with any regulatory decisions as the Council may issue in accordance with its powers under this Part.

Application of Part XII with regard to appeals from regulatory decisions taken by the Council under this Part.

43F. A regulatory decision taken by the Council under this Part may be contested in the same manner as if it is a decision taken by the Director General under this Act, and the provisions of Part XII in so far as they relate to any aspect concerning the appeal of any such decision taken by the Council before the Appeals Tribunal or before the Court of Appeal as the case may be, shall apply accordingly.

Power to make regulations.

43G. The Minister may make regulations on any aspect relating to consumer to trader alternative dispute resolution procedures, on the role and functions of the Council under this Part, and for the better functioning of such ADR procedures in Malta, including the power of the Council to impose administrative penalties not exceeding fifty thousand euro (€50,000) and, or not exceeding one hundred euro (€100) for each day of non-compliance, and the procedure to be followed by the Council before taking a final decision whether to impose such penalties or not under this Part."

6. Immediately after the Second Schedule to the principal Act there shall be added the following new schedule:

Addition of Schedule to the principal Act.

"THIRD SCHEDULE (Article 43C)

In accordance with the provisions of article 43C, the following public entity is being designated to perform the functions of a residual ADR entity:

The Complaints and Conciliation Directorate established under the Fourth Schedule of the Malta Competition and Consumer Affairs Act (Cap. 510)."

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Amendment of
the Arbitration
Act.
Cap. 387

7. The second proviso to paragraph 1.3 of the Fourth Schedule to the Arbitration Act shall be substituted by the following:

"Provided further that notwithstanding the provisions of any other law other than the Consumer Affairs Act or any regulations made thereunder in so far as such laws deal with the resolution, however so described, of any consumer disputes, and without prejudice to pending cases, the Arbitration Tribunal shall have exclusive jurisdiction over these cases."

Amendment of
the Malta
Competition and
Consumer
Affairs
Authority Act.
Cap. 510.

8. The sub-title "Office for Consumer Affairs" of the Fourth Schedule to the Malta Competition and Consumer Affairs Authority Act shall be amended as follows:

(a) in paragraph 1 thereof for the words "with the responsibility to create awareness of consumer rights" there shall be substituted the words "with the responsibility to offer assistance to consumers, to create awareness of consumer rights"; and

(b) paragraph 2 thereof shall be substituted by the following:

"2. Complaints and Conciliation Directorate with the responsibility of following disputes lodged by consumers against traders, of proposing solutions or bringing the parties together with the aim of facilitating an amicable solution. This Directorate shall in the effective handling and resolution of any such disputes act independently from the parties involved and from any other persons."

Amendment of
the Civil Code.
Cap.16.

9. Immediately after paragraph (d) of article 2125 of the Civil Code there shall be added the following new paragraph:

Cap. 378.

"(e) where a consumer who has a dispute with a trader, has recourse to an ADR procedure in accordance with the Consumer Affairs Act, the outcome of which procedure is not binding on either party, until such time when the ADR procedure is brought to a conclusion:

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Provided that the provisions of article 2 of the Consumer Affairs Act shall apply in relation to this paragraph."

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Passed by the House of Representatives at Sitting No. 312 of the
26th October, 2015.

ĊENSU GALEA
Deputy Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

