VERŻJONI ELETTRONIKA

L.N. 56 of 2017

CONSUMER AFFAIRS ACT
(CAP. 378)

Consumer Alternative Dispute Resolution (Residual ADR) Regulations, 2017

IN the exercise of the powers conferred by article 7 of the Consumer Affairs Act, the Minister responsible for Social Dialogue, Consumer Affairs and Civil Liberties, after consultation with the Consumer Affairs Council, has made the following regulations:-

PART I
Preliminary

Citation.

1. The title of these regulations is the Consumer Alternative Dispute Resolution (Residual ADR) Regulations, 2017.

Interpretation. Cap. 378.

2. (1) Any reference in these regulations to the "Act" is a reference to the Consumer Affairs Act, and the provisions of articles 2 and 43A of the said Act shall apply to these regulations provided that the definitions contained in sub-regulation (2) shall in all instances for the purposes of these regulations prevail.

(2) In these regulations, unless the context otherwise requires:

"ADR" means alternative dispute resolution;

"ADR entity" means any entity, however named or referred to, which is established on a durable basis and offers the resolution of a dispute through an ADR procedure and that is listed in accordance with regulation 20 of the Consumer Alternative Dispute Resolution (General) Regulations;

S.L.378.18.

"ADR officer" means a natural person in charge of the ADR process;

"ADR procedure" means a procedure, as referred to in regulation 3 of the Consumer Alternative Dispute Resolution (General) Regulations, which complies with the requirements set out under the aforementioned regulations and is carried out by an ADR entity;

S.L.378.18.

"Board" means the Board of Governors established under article 8 of the Malta Competition and Consumer Affairs Authority Act;

Cap. 510.

VERŻJONI ELETTRONIKA

"CCD" means the Complaints and Conciliation Directorate established under the Fourth Schedule of the Malta Competition and Consumer Affairs Authority Act; Cap. 510.

"Chairman" means the Chairman of the Board and of the Malta Competition and Consumer Affairs Authority appointed in terms of article 9(1) of the Malta Competition and Consumer Affairs Authority Act; Cap. 510.

"conflict of interest" means that situation in which ADR officers have private or personal interests sufficient to influence or appear to influence their independence or impartiality;

"Council" means the Consumer Affairs Council established under Part II of the Consumer Affairs Act; Cap. 378.

"cross-border dispute" means a contractual dispute arising from a sales or services contract where, at the time the consumer orders the goods or services, the consumer is resident in a Member State other than the Member State in which the trader is established;

"Director General (Consumer Affairs)" means the person so appointed by virtue of article 16(2) of the Malta Competition and Consumer Affairs Authority Act; Cap. 510.

"domestic dispute" means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident in the same Member State as that in which the trader is established;

"ODR Platform" means the online dispute resolution platform established under Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR);

"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;

"trader" means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession.

VERŻJONI ELETTRONIKA

(3) A trader is established:

(a) if the trader is a natural person where he has his place of business; and

(b) if the trader is a company or other legal person or association of natural or legal persons, where it has its statutory seat, central administration or place of business, including a branch, agency or any other establishment.

(4) An ADR entity is established:

(a) if it is operated by a natural person, at the place where it carries out ADR activities; or

(b) if the entity is operated by a legal person or association of natural or legal persons, at the place where that legal person or association of natural or legal persons carries out ADR activities or has its statutory seat; or

(c) if it is operated by an authority or other public body, at the place where the authority or other public body has its seat.

Residual ADR entity.

3. The CCD shall be the public entity designated to perform the functions of a residual ADR entity.

Disputes that the CCD shall take cognizance of.

4. (1) The CCD shall take cognizance of domestic and cross-border disputes concerning contractual obligations resulting from sales contracts or service contracts between a trader established in the European Union and a consumer resident in the European Union and shall intervene to bring the parties together with the aim of facilitating or proposing a solution.

(2) The CCD shall not take cognizance of disputes in relation to:

(a) non-economic services of general interest;

(b) disputes between traders;

(c) direct negotiation between the consumer and the trader;

(d) procedures initiated by a trader against a consumer;

(e) health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of

VERŻJONI ELETTRONIKA

medicinal products and medical devices; and

(f) the public provision of further or higher education;

Grounds on which the residual ADR entity may refuse to deal with a given dispute.

5. (1) The CCD may refuse to accept a given dispute on the ground that:

(a) the consumer did not attempt to contact the trader concerned in order to discuss his compliant and seek, as a first step, to resolve the matters directly with the trader;

(b) the dispute is frivolous or vexatious;

(c) the dispute is being or has previously been considered by another ADR entity or by a competent court or tribunal;

(d) the consumer has not submitted the complaint to the CCD within two (2) years from the date upon which the consumer submitted the complaint to the trader;

(e) dealing with such a dispute would otherwise seriously impair the effective operation of the CCD.

(2) For the purposes of paragraphs (a) and (d), the CCD may require the consumer to prove by adequate means that he had, prior to lodging his complaint with the CCD, attempted to resolve the matter directly with the trader.

(3) Without prejudice to the provisions of sub-regulation (1), where the CCD is unable to consider a dispute that has been submitted to it, it shall provide all the parties to the dispute with a reasoned written explanation of the grounds for not considering the dispute within three (3) weeks of receiving the complaint.

(4) Under no circumstances shall the ADR process prevent any person from exercising the right of access to the judicial system.

Relationship with other national legislation.

6. Unless stated otherwise in these regulations, if any provision of these regulations conflicts with a provision laid down in any other national law, the provisions of these regulations shall prevail.

VERŻJONI ELETTRONIKA

PART II
The ADR officers

Expertise, independence and impartiality

7. (1) The ADR officers in charge of the ADR shall possess the necessary knowledge and skills in the field of alternative or judicial resolution of consumer disputes, as well as a general understanding of law.

(2) The terms and conditions of employment of the ADR officers, including their remuneration shall be established, and their appointment shall be made in accordance with Part X of the Malta Competition and Consumer Affairs Authority Act:

Cap. 510.

Provided that the ADR officers shall not be appointed for a period shorter than three (3) years and shall be eligible to be re-appointed for a further term or terms of not less than three (3) years.

(3) The ADR officers shall not be subject to any instructions from either party or their representatives.

(4) The ADR officers shall assist the parties to reach a resolution that is timely, fair and cost-effective.

(5) The ADR officers may, in conducting the ADR process, refer to codes of conduct, legal provisions and relevant jurisprudence, and may use as a basis for the dispute resolution, considerations of equity and fairness.

(6) The ADR officer in charge of the ADR process shall disclose to the CCD any circumstances that may or may be seen to affect his independence and impartiality or give rise to a conflict of interest with either party to the dispute he is asked to resolve. The obligation to disclose such circumstances shall be a continuing obligation throughout the ADR procedure:

Provided that the ADR officer shall be allowed to continue the ADR process if the parties have not objected after they have been duly informed of the circumstances and their right to object.

(7) Without prejudice to the provisions of the preceding sub-regulation, an ADR officer shall abstain from assisting the parties to reach a resolution to their dispute:

(a) if he is the spouse of any of the parties or if he is related to any of the parties by consanguinity or affinity in the direct line up to any degree or in the collateral line up to the

VERŻJONI ELETTRONIKA

degree of cousin inclusively;

(b) if he is the tutor, curator, or presumptive heir of any of the parties;

(c) if he is or has been the agent of any of the parties;

(d) if he is the administrator of any establishment or partnership involved in the ADR process; or

(e) if he has or might have a personal interest in the outcome of the ADR process.

PART III
Procedure relative to the ADR process

Liberty.

8. (1) In the absence of an agreement to the contrary, the participation of both the consumer and the trader in the ADR process shall be on a voluntary basis:

Provided that any agreement between a consumer and a trader to submit complaints to the CCD is not binding on the consumer if it was concluded before the dispute has materialised and if it has the effect of depriving the consumer of his right to bring an action before the competent courts or tribunals for the settlement of the dispute.

(2) The parties may withdraw from the ADR procedure at any stage and for any reason whatsoever, including if they are dissatisfied with the performance or the operation of the procedure and the ADR officer shall, prior to commencing the ADR procedure inform the parties of such right.

Fees.

9. The CCD shall offer the ADR free of charge.

Language.

10. The CCD shall allow complaints to be submitted, and shall conduct the ADR process in either the Maltese or English language:

Provided that where any party does not understand the language in which the ADR process is being conducted, such process shall be interpreted to him by the ADR officer.

Accessibility.

11. The CCD shall ensure that the ADR procedure is available and easily accessible online and offline.

Representation and assistance.

12. The parties shall not be obliged to retain a lawyer or a legal advisor, but they may seek independent advice or to be represented or assisted by a third party at any stage of the procedure.

VERŻJONI ELETTRONIKA

Procedure.

13. (1) The CCD shall upon receiving all the documents which include the relevant information relating to the complaint notify the parties to the dispute with the date, time and place for the first ADR session.

(2) Without prejudice to the provisions of the preceding regulation, the parties or their representatives shall appear on the date and time and at the place indicated in the notification:

Provided that in the case of disputes referred through the ODR Platform, the physical presence of the parties or their representatives shall not be required.

(3) The outcome of the ADR shall be made available to the parties by means of a report formulated by the ADR officer conducting the ADR process and which shall contain:

(a) a summary of the events which gave rise to the dispute;

(b) a copy of the documents received which include the relevant information relating to the dispute;

(c) the minutes of each ADR session forming part of the ADR process; and

(d) the outcome in the form of a proposed solution to the dispute;

(e) a statement of the grounds on which the outcome is based.

(4) The outcome of the ADR procedure shall be made available to the parties within a period of ninety (90) calendar days from the date on which the CCD has received the complete complaint file:

Provided that in the case of highly complex disputes, the CCD may, at its own discretion, extend the ninety (90) calendar day's time period, in which case, the parties shall be informed of any extension of that period and of the expected length of time that will be needed for the conclusion of the dispute.

Legal effect.

14. Any agreement relating to the ADR process shall be made in writing in the presence of an ADR officer and shall, for all intents and purposes of the law be considered a private writing.

Fairness.

15. (1) The CCD shall ensure that throughout the ADR

VERŻJONI ELETTRONIKA

process:

(a) the parties have the possibility, within a reasonable period of time, of expressing their point of view and of submitting evidence including documents and opinions of experts in so far as relevant to the dispute and to be provided with the arguments, evidence, documents and facts put forward by the other party or parties, any statements made and opinions given by experts and of being able to comment on them;

(b) the parties are informed that they are not obliged to retain a lawyer or a legal advisor, but they may seek independent advice or to be represented or assisted by a third party at any stage of the procedure;

(c) the parties are provided with a report on the outcome of the ADR in writing or on a durable medium, which shall contain a statement of the grounds on which the outcome is based.

(2) The parties, before agreeing to a proposed solution shall be informed that:

(a) they have the choice as to whether or not to agree to or follow the proposed solution;

(b) participation in the procedure does not preclude the possibility of seeking redress through proceedings in a competent court or tribunal;

(c) the proposed solution may be different from an outcome determined by a competent court or tribunal applying legal rules.

(3) The parties, before agreeing to or following a proposed solution or an amicable solution, should be informed of the legal effects of agreeing to or following such a proposed solution.

(4) The parties, shall, before expressing their written consent to the proposed solution, be allowed a period of not less than three (3) days to reflect.

(5) In establishing the period of time referred to in the preceding sub-regulation, regard shall be had to the specific nature and circumstances of the dispute.

16. The participation in the ADR process shall not prevent the parties from initiating judicial proceedings in relation to that dispute Prescription.

VERŻJONI ELETTRONIKA

as a result of the expiry of limitation or prescription periods as provided under any provision of national law during the ADR procedure:

Provided that this regulation shall be without prejudice to provisions on limitation or prescription contained in international agreements to which Malta is a party.

Confidentiality.

17. Any communication or discussion made during the ADR process as well as the content of the agreement resulting from the ADR process shall be treated as confidential:

Provided that disclosure of the content of the agreement resulting from the ADR process shall be permitted:

(a) where this is necessary for overriding considerations of public policy;

(b) where such disclosure is necessary in order to implement or enforce the agreement resulting from the ADR process;

(c) where the existence of the agreement or a term or clause therein is being denied by the other party;

(d) where all parties expressly agree in writing to the disclosure of the content of the agreement resulting from the ADR process; or

(e) where this is required by an authority, court or competent tribunal of a Member State.

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