Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,324, 7 ta' Jannar, 2020

Taqsima B

L.N. 2 of 2020

MALTA FINANCIAL SERVICES AUTHORITY ACT (CAP. 330)

Distance Selling (Retail Financial Services) (Amendment) Regulations, 2020

IN EXERCISE of the powers conferred by articles 20A and 20B of the Malta Financial Services Authority Act, the Minister responsible for the regulation of Financial Services, acting on the advice of the Malta Financial Services Authority as the competent authority for the purposes of the Act, has made the following regulations:-

Citation and scope.

S.L. 330.07.

1. (1) The title of these regulations is the Distance Selling (Retail Financial Services) (Amendment) Regulations, 2020 and these regulations shall be read and construed as one with the Distance Selling (Retail Financial Services) Regulations, hereinafter referred to as "the principal regulations".

(2) The purpose of these regulations is, in part, to transpose Article 110 of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

Amends regulation 2 of the principal regulations.

2. Sub-regulation (1) of regulation 2 of the principal regulations shall be amended as follows:

(a) immediately after the definition "the Act", there shall be added the following new definitions:

" "Arbiter" means the Arbiter for Financial Services appointed under article 14 of the Arbiter for Financial Services Act;

Cap. 555.

"Central Bank" means the Central Bank of Malta as defined by the Central Bank of Malta Act;";

Cap. 204.

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

" "the CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on the access to the activity of credit institutions and the

prudential supervision of credit institutions and investment firms, amending Directive 2002/ 87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;";

(c) immediately after the definition "EEA State", there shall be added the following new definition:

" "Electronic Money Directive" means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;";

(d) the definition "Minister" shall be deleted; and

(e) immediately after the definition "Member State", there shall be added the following new definitions:

" "payment service" means any business activity set out in the Second Schedule to the Financial Institutions Act; Cap. 376.

"Payment Services Directive" means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"payment service provider" means:

(a) credit institutions as defined in article 2(1) of the Banking Act, including branches thereof as defined in article 2(1) of the Banking Act where such branches are located in the European Union, irrespective of whether the head offices of those branches are located within the European Union or, in accordance with Article 47 of the CRD and with national law, outside the European Union; Cap. 371.

(b) electronic money institutions as defined in article 2(1) of the Financial Institutions Act, being companies, that have been granted authorisation under Title II of the Electronic Money Directive to issue electronic money, including, in accordance with Article 8 of that Directive and with national law, branches thereof, where such branches are located within the European Union and their head offices are located outside the European Union, in as far as the payment services provided by those branches are linked to the issuance of electronic money; Cap. 376.

(c) post office giro institutions which are entitled under national law of any Member State to provide payment services;

(d) payment institutions as defined in article 2(1) of the Financial Institutions Act; Cap. 376.

(e) account information service providers as defined in article 2(1) of the Financial Institutions Act; Cap. 376.

(f) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities; or

(g) Member States or their regional or local authorities when not acting in their capacity as public authorities.".

3. Paragraph (d) of sub-regulation (1) of regulation 5 of the principal regulations shall be amended as follows: Amends of regulation 5 of the principal regulations.

(a) in sub-paragraph (i) thereof, the words "to the supplier, the relevant contact details", shall be substituted by the words "to the supplier and the relevant contact details";

(b) sub-paragraph (ii) thereof, shall be substituted by the following:

"(ii) that the Arbiter offers an out-of-court complaints mechanism for the consumer that is party to the

distance contract and the methods for having access thereto;";

(c) in sub-paragraph (iv) thereof, the words "any compensation schemes or other compensation arrangements or guarantees funds as may be applicable.", shall be substituted by the words "any compensation schemes or other compensation arrangements or guarantees funds as may be applicable:"; and immediately thereafter there shall be added the following new provisos:

"Provided that paragraphs (a), (b)(i), (b)(ii), (c)(ii), (c)(iii), (c)(vi), (c)(vii), (d)(i), (d)(ii) and (d)(iii) shall not apply to suppliers which are payment service providers:

Provided further that Articles 44, 45, 51 and 52 of the Payment Services Directive as transposed in directives issued by the Central Bank under the Central Bank of Malta Act shall also apply to suppliers which are payment service providers.".

Cap. 204.

Amends regulation 12 of the principal regulations.

4. Regulation 12 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, the words "the Consumer Complaints Manager who shall investigate such complaint in accordance with article 20 of the Act.", shall be substituted by the words "the Arbiter in terms of the Arbiter for Financial Services Act."; and

Cap. 555.

(b) in sub-regulation (2) thereof, the words "The Consumer Complaints Manager", shall be substituted by the words "The Arbiter for Financial Services".

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€0.18