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I assent.

(L.S.)

GEORGE VELLA
President

14th January, 2022

ACT No. I of 2022

An ACT to amend the Consumer Affairs Act, Cap. 378.

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.
Cap. 378.

1. (1) The short title of this Act is the Consumer Affairs (Amendment) Act, 2022 and this Act shall be read and construed as one with the Consumer Affairs Act, hereinafter referred to as the "principal Act".

(2) This Act shall come into force on 1st January 2022.

Amendment of
article 72 of the
principal Act.

2. Article 72 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof:

(i) immediately before the definition "commercial guarantee" the following new definition shall be added:

" "consumer" means any natural person who, in relation to contracts covered by this Part, is acting for

purposes which are outside that person's trade, business, craft or profession;";

(ii) the definition "commercial guarantee" shall be substituted by the following:

" "commercial guarantee" means any undertaking by a seller or a producer (the guarantor) to the consumer, in addition to the seller's legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;";

(iii) immediately after the definition "commercial guarantee" there shall be added the following new definitions:

" "compatibility" means the ability of the goods to function with hardware or software with which goods of the same type are normally used, without the need to convert the goods, hardware or software;

"digital content" means data which are produced and supplied in digital form;

"digital service" means:

(a) a service that allows the consumer to create, process, store or access data in digital form; or

(b) a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service;

"durability" means the ability of the goods to maintain their required functions and performance through normal use;

"durable medium" means any instrument which enables the consumer or the seller to store information addressed personally to that person in a way that is accessible for future reference, for a

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period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored;";

(iv) the definition "free of charge" shall be substituted by the following:

" "free of charge" means free of the necessary costs incurred in order to bring the goods into conformity, particularly the cost of postage, carriage, labour or materials;";

(v) immediately after the definition "free of charge" there shall be added the following new definition:

" "functionality" means the ability of the goods to perform their functions having regard to their purpose;";

(vi) the definition "goods" shall be substituted by the following:

" "goods" means:

(a) any tangible movable items of property:

Provided that water, gas and electricity shall be considered as goods within the meaning of this Part when they are put up for sale in a limited volume or a set quantity;

(b) tangible movable items that incorporate or are inter-connected with digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions, hereinafter referred to as "goods with digital elements";";

(vii) immediately after the definition "guarantor" there shall be added the following new definition:

" "interoperability" means the ability of the goods to function with hardware or software different from those with which goods of the same type are normally used;";

(viii) the definition "producer" shall be substituted by the following:

" "producer" means a manufacturer of goods, an importer of goods into the European Union or any person purporting to be a producer by placing its name, trade mark or other distinctive sign on the goods;"

(ix) immediately after the definition "producer" there shall be added the following new definition:

" "public auction" means a method of sale where goods or services are offered by the seller to consumers, who attend or are given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by an auctioneer and where the successful bidder is bound to purchase the goods or services;"

(x) the definition "repair" shall be substituted by the following:

" "repair" means in the event of lack of conformity, the process of bringing goods into conformity with the sales contract;"

(xi) immediately after the definition "repair" there shall be added the following new definitions:

" "sales contract" means any contract under which the seller transfers or undertakes to transfer ownership of goods to a consumer, and the consumer pays or undertakes to pay the price thereof;

" "seller" means any natural person or any legal person, irrespective of whether privately or publicly owned, that is acting, including through any other person acting in that natural or legal person's name or on that person's behalf, for purposes relating to that person's trade, business, craft or profession, in relation to contracts covered by this Part.";

(b) sub-article (2) thereof shall be substituted by the following:

"(2) The provisions of this Part shall be applicable to sales contracts between a consumer and a seller.";

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(c) sub-article (3) thereof shall be substituted by the following:

"(3) Contracts between a consumer and a seller for the supply of goods to be manufactured or produced shall also be deemed sales contracts for the purposes of this Part.";

(d) immediately after sub-article (3) thereof there shall be added the following new sub-articles (4) and (5):

"(4) This Part shall not apply to contracts for the supply of digital content or digital services. It shall, however, apply to digital content or digital services which are incorporated in or inter-connected with goods, as defined in paragraph (b) of the definition "goods" in sub-article (1) and are provided with the goods under the sales contracts, irrespective of whether such digital content or digital service is supplied by the seller or by a third party. In the event of doubt as to whether the supply of incorporated or inter-connected digital content or an incorporated or inter-connected digital service forms part of the sales contract, the digital content or digital service shall be presumed to be covered by the sales contract.

(5) This Part shall not apply to:

(a) any tangible medium which serves exclusively as a carrier for digital content;

(b) any goods sold by way of execution or otherwise by authority of law; or

(c) contracts for the sale of second-hand goods sold at public auction:

Provided that in the case referred to in paragraph (c), clear and comprehensive information that the rights deriving from this Part do not apply shall be made easily available to consumers by auctioneers as defined in the Auctioneers Act."

Cap. 342.

Substitution of
article 73 of the
principal Act.

3. Article 73 of the principal Act shall be substituted by the following:

"Subjective
requirements for
conformity.

73. (1) Sellers shall deliver goods to the consumer that conform with the sales contract, which goods shall, in particular, where applicable:

Objective
requirements for
conformity.

(a) be of the description, type, quantity and quality, and possess the functionality, compatibility, interoperability and other features, as required by the sales contract;

(b) be fit for any particular purpose for which the consumer requires them and which the consumer made known to the seller at the latest at the time of the conclusion of the sales contract, and in respect of which the seller has given acceptance;

(c) be delivered with all accessories and instructions, including on installation, as stipulated by the sales contract; and

(d) be supplied with updates as stipulated by the sales contract.

(2) In addition to complying with any subjective requirement for conformity with sub-article (1) the goods shall also:

(a) be fit for the purposes for which goods of the same type would normally be used, taking into account, where applicable, any law, technical standards or, in the absence of such technical standards, applicable sector-specific industry codes of conduct;

(b) where applicable, be of the quality and correspond to the description of a sample or model that the seller made available to the consumer before the conclusion of the contract;

(c) where applicable, be delivered along with such accessories, including packaging, installation instructions or other instructions, as the consumer may reasonably expect to receive; and

(d) be of the quantity and possess the qualities and other features, including in relation to durability, functionality, compatibility and security normal for goods of the same type and which the consumer may reasonably expect given the nature of the goods and taking into account any public statement made by or on behalf of the seller, or other persons in previous links of the chain of transactions, including the producer, particularly in advertising or on labelling.

(3) The seller shall not be bound by public statements, as referred to in sub-article (2)(d) if the seller shows that:

(a) the seller was not, and could not reasonably have been, aware of the public statement in question;

(b) by the time of conclusion of the contract, the public statement had been corrected in the same way as, or in a way comparable to how, it had been made; or

(c) the decision to buy the goods could not have been influenced by the public statement.

(4) In the case of goods with digital elements, the seller shall ensure that the consumer is informed of and supplied with updates, including security updates, that are necessary to keep those goods in conformity, for the period of time:

(a) that the consumer may reasonably expect given the type and purpose of the goods and the digital elements, and taking into account the circumstances and nature of the contract, where the sales contract provides for a single act of supply of the digital content or digital service; or

(b) indicated in the proviso of article 78(1) where the sales contract provides for a continuous supply of the digital content or digital service over a period of time.

(5) Where the consumer fails to install within a reasonable time updates supplied in accordance with sub-article (4), the seller shall not be liable for any lack of conformity resulting solely from the lack of the relevant update, provided that:

(a) the seller informed the consumer about the availability of the update and the consequences of the failure of the consumer to install it; and

(b) the failure of the consumer to install or the incorrect installation by the consumer of the update was not due to shortcomings in the installation instructions provided to the consumer.

(6) There shall be no lack of conformity within the meaning of sub-article (2) or (4) if, at the time of the conclusion of the sales contract the consumer was specifically informed that a particular characteristic of the goods was deviating from the objective requirements for conformity laid down in sub-article (2) or (4) and the consumer expressly and separately accepted that deviation when concluding the sales contract.

Incorrect installation of the goods.

(7) Any lack of conformity resulting from the incorrect installation of the goods shall be regarded as lack of conformity of the goods if:

(a) the installation forms part of the sales contract and was carried out by the seller or under the seller's responsibility; or

(b) the installation, intended to be carried out by the consumer, was done by the consumer and the incorrect installation was due to shortcomings in the installation instructions provided by the seller or, in the case of goods with digital elements, provided by the seller or by the supplier of the digital content or digital service.

(8) Nothing in this article shall prejudice the application of article 73A."

4. Immediately after article 73 of the principal Act there shall be added the following new article 73A:

Addition of new article 73A to the principal Act.

"Third party rights.

73A. Where a restriction resulting from a violation of any right of a third party, in particular intellectual property rights, prevents, or limits the use of the goods in accordance with sub-articles (1) to (6) of article 73, the consumer is entitled to the remedies established for lack of conformity in article 74(1), (2), (3), (4), in article 75(1) and in article 76(2), unless the law provides for the nullity or rescission of the sales contract in such cases."

5. Article 74 of the principal Act shall be substituted by the

Substitution of article 74 of the principal Act.

following:

"Remedies for lack of conformity.

74. (1) In the event of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity or to receive a proportionate reduction in the price, or to terminate the contract, under the conditions set out in this article and in article 75.

(2) The seller may refuse to bring the goods into conformity if repair and replacement are impossible or would impose costs on the seller that would be disproportionate, taking into account all circumstances including those mentioned in paragraphs (a) and (b) of sub-article (1) of article 75.

(3) The consumer shall be entitled to either a proportionate reduction of the price in accordance with article 76(1) or the termination of the sales contract in accordance with article 78A in any of the following cases:

(a) the seller has not completed repair or replacement or, where applicable, has not completed repair or replacement in accordance with article 75(3) and (4), or the seller has refused to bring the goods into conformity in accordance with sub-article (4);

(b) a lack of conformity appears despite the seller having attempted to bring the goods into conformity;

(c) the lack of conformity is of such a serious nature as to justify an immediate price reduction or termination of the sales contract; or

(d) the seller has declared, or it is clear from the circumstances, that the seller will not bring the goods into conformity within a reasonable time, or without significant inconvenience for the consumer.

(4) The consumer shall have the right to withhold payment of any outstanding part of the price or a part thereof until the seller has fulfilled the seller's obligations under this Part."

Substitution of article 75 of the principal Act.

6. Article 75 of the principal Act shall be substituted by the

following:

"Repair or replacement of goods.

75. (1) In order to have the goods brought into conformity, the consumer may choose between repair and replacement, unless the remedy chosen would be impossible or, compared to the other remedy, would impose costs on the seller that would be disproportionate, taking into account all circumstances, including:

- (a) the value the goods would have if there were no lack of conformity;
- (b) the significance of the lack of conformity; and
- (c) whether the alternative remedy could be provided without significant inconvenience to the consumer.

(2) Repairs or replacements shall be carried out:

- (a) free of charge;
- (b) within a reasonable period of time from the moment the seller has been informed by the consumer about the lack of conformity; and
- (c) without any significant inconvenience to the consumer, taking into account the nature of the goods and the purpose for which the consumer required the goods.

(3) Where the lack of conformity is to be remedied by repair or replacement of the goods, the consumer shall make the goods available to the seller. The seller shall take back the replaced goods at the seller's expense.

(4) Where a repair requires the removal of goods that had been installed in a manner consistent with their nature and purpose before the lack of conformity became apparent, or where such goods are to be replaced, the obligation to repair or replace the goods shall include the removal of the non-conforming goods, and the installation of replacement goods or repaired goods, or bearing the costs of that removal and installation.

(5) The consumer shall not be liable to pay for normal use made of the replaced goods during the period prior to their replacement."

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Substitution of
article 76 of the
principal Act.

7. Article 76 of the principal Act shall be substituted by the following:

"Price reduction.

76. (1) The reduction of price shall be proportionate to the decrease in the value of the goods which were received by the consumer compared to the value the goods would have if they were in conformity.

(2) The consumer shall not be entitled to terminate the contract if the lack of conformity is only minor. The burden of proof with regard to whether the lack of conformity is minor shall be on the seller."

Substitution of
article 77 of the
principal Act.

8. Article 77 of the principal Act shall be substituted by the following:

"Right of redress.

77. Where the seller is liable to the consumer because of a lack of conformity resulting from an act or omission, including omitting to provide updates to goods with digital elements in accordance with article 73(4), by a person in previous links of the chain of transactions, the final seller shall be entitled to pursue remedies against the person or persons liable in the chain of transactions."

Substitution of
article 78 of the
principal Act.

9. Article 78 of the principal Act shall be substituted by the following:

"Liability of the
seller.

78. (1) The seller shall be liable to the consumer for any lack of conformity which exists at the time when the goods were delivered and which becomes apparent within two years of that time. Without prejudice to article 73(4), this sub-article shall also apply to goods with digital elements:

Provided that in the case of goods with digital elements, where the sales contract provides for a continuous supply of the digital content or digital service over a period of time, the seller shall also be liable for any lack of conformity of the digital content or digital service that occurs or becomes apparent within two years of the time when the goods with digital elements were delivered. Where the contract provides for a continuous supply for more than two years, the seller shall be liable for any lack of conformity of the digital content or digital service that occurs or becomes apparent within the period of time during which the digital content or digital service is to be supplied under the sales contract.

(2) The two-year period mentioned in sub-article (1) shall be suspended for the duration of negotiations carried on between the seller and the consumer with a view to an amicable settlement."

10. Immediately after article 78 of the principal Act there shall be added the following new article 78A:

Addition of new article 78A to the principal Act.

"Termination of the sales contract.

78A. (1) The consumer shall exercise the right to terminate the sales contract by means of a statement to the seller expressing the decision to terminate the sales contract:

Provided that where the lack of conformity relates to only some of the goods delivered under the sales contract and there is a ground for termination of the sales contract pursuant to article 74, the consumer may terminate the sales contract only in relation to those goods, and in relation to any other goods which the consumer acquired together with the non-conforming goods if the consumer cannot reasonably be expected to accept to keep only the conforming goods.

(2) Where the consumer terminates a sales contract as a whole or, in accordance with the proviso in the preceding sub-article, in relation to some of the goods delivered under the sales contract:

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(a) the consumer shall return to the seller, at the seller's expense, the goods; and

(b) the seller shall reimburse to the consumer the price paid for the goods upon receipt of the goods or of evidence provided by the consumer of having sent back the goods."

Substitution of article 79 of the principal Act.

11. Article 79 of the principal Act shall be substituted by the following:

"Obligation to notify.

79. In order to benefit from the remedies available under this Part, a consumer shall notify the seller on a durable medium of any lack of conformity within a period of at least two months from the date on which the consumer detected such lack of conformity."

Substitution of article 80 of the principal Act.

12. Article 80 of the principal Act shall be substituted by the following:

"Burden of proof.

80. (1) Any lack of conformity which becomes apparent within one year of the time when the goods were delivered shall be presumed to have existed at the time when the goods were delivered, unless proved otherwise or unless this presumption is incompatible with the nature of the goods or with the nature of the lack of conformity. This sub-article shall also apply to goods with digital elements.

(2) In the case of goods with digital elements where the contract of sale provides for the continuous supply of the digital content or digital service over a period of time, the burden of proof with regard to whether the digital content or digital service was in conformity within the period of time referred to in the proviso of article 78(1) shall be on the seller for a lack of conformity which becomes apparent within the period of time referred to in that article."

Substitution of article 81 of the principal Act.

13. Article 81 of the principal Act shall be substituted by the

following:

"Mandatory nature.

81. Unless otherwise provided for in this Part, any contractual agreement which, to the detriment of the consumer, excludes the application of this Part, derogates from them, or varies their effect, before the lack of conformity of the goods is brought to the seller's attention by the consumer, shall not be binding on the consumer."

14. Article 83 of the principal Act shall be substituted by the following:

Substitution of article 83 of the principal Act.

"Requirements for commercial guarantees.

83. (1) A commercial guarantee statement shall be provided to the consumer on a durable medium at the latest at the time of the delivery of the goods. The commercial guarantee statement shall be expressed in plain, intelligible language and it shall include the following:

(a) be formulated in at least one of the official languages of Malta;

(b) specify the name and address of the guarantor, and clearly state the permanent address of the place of trade or business and the name of the person who is supplying the consumer with the commercial guarantee;

(c) clearly state the contents of the guarantee including its territorial scope if this is limited as well as the duration of the guarantee from the date of purchase and different periods may be stipulated for different components of any goods;

(d) clearly specify the procedure to be followed by the consumer to obtain the implementation of the commercial guarantee. If a person who, in supplying a commercial guarantee, fails to provide the consumer with the information required under this paragraph, he shall then be responsible for the execution of the commercial guarantee at his expense;

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(e) clearly state whether the commercial guarantee may be transferred to others. Unless otherwise stipulated the commercial guarantee may also be availed of by any subsequent owners of the goods to which the commercial guarantee refers:

Provided that unless the commercial guarantee specifically states otherwise, it shall be assumed that in the case of goods, the commercial guarantee covers any defects that may result during the period of guarantee;

(f) the designation of the goods to which the commercial guarantee applies;

(g) a clear statement that the consumer is entitled by law to remedies from the seller free of charge in the event of a lack of conformity of the goods and that those remedies are not affected by the commercial guarantee; and

(h) the terms of the commercial guarantee.

(2) Non-compliance with sub-article (1) shall not affect the binding nature of the commercial guarantee for the guarantor."

Substitution of article 84 of the principal Act.

15. Article 84 of the principal Act shall be substituted by the following:

"Liability under a commercial guarantee.

84. Where a seller or any other person gives a commercial guarantee to a consumer, irrespective of when or how it is given, then that seller or other person shall be liable to the consumer for the observance of the terms and execution of the commercial guarantee as if he were the guarantor."

Substitution of article 90 of the principal Act.

16. Article 90 of the principal Act shall be substituted by the

following:

"Binding effect of commercial guarantees.

90. Any commercial guarantee shall be binding on the guarantor under the conditions laid down in the commercial guarantee statement and associated advertising available at the time, or before the conclusion, of the contract. Under the conditions laid down in this article and without prejudice to any other applicable law, where a producer offers to the consumer a commercial guarantee of durability for certain goods for a certain period of time, the producer shall be liable directly to the consumer, during the entire period of the commercial guarantee of durability for repair or replacement of the goods in accordance with article 75(2) to (5). The producer may offer to the consumer more favourable conditions in the commercial guarantee of durability statement:

Provided that if the conditions laid out in the commercial guarantee statement are less advantageous to the consumer than those laid down in the associated advertising, the commercial guarantee shall be binding under the conditions laid down in the advertising relating to the commercial guarantee, unless, before the conclusion of the contract, the associated advertising was corrected in the same way or in a comparable way to that in which it was made."

17. Article 92 of the principal Act shall be substituted by the following:

Substitution of article 92 of the principal Act.

"Other contractual arrangements.

92. This Part shall not prevent the seller from offering to the consumer contractual arrangements that go beyond the protection provided for in this Part."

18. Article 93 of the principal Act shall be substituted by the

Substitution of article 93 of the principal Act.

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following:

"Replacement parts, repair service where goods require maintenance.

93. If the goods being the object of a sales contract to a consumer are of a nature that may require maintenance, or possible replacement of parts, then replacement parts and appropriate repair service must be made available for a reasonable time from the date of the delivery of the goods by the seller to the consumer."

Deletion of article 93A of the principal Act.

19. Article 93A of the principal Act shall be deleted.

Substitution of article 93B of the principal Act.

20. Article 93B of the principal Act shall be substituted by the following:

"Purpose of this Part.

93B. The purpose of this Part is to implement the provisions of Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (Text with EEA relevance) and the provisions of this Part shall be applied and interpreted accordingly."

Addition of new article 93C to the principal Act.

21. Immediately after article 93B of the principal Act there shall be added the following new article 93C:

"Saving.

Act No. I of 2022.

93C. Contracts concluded before the 1 January 2022 shall be regulated by the provisions of this Part as in force prior to the entry into force of the Consumer Affairs (Amendment) Act, 2022."

Passed by the House of Representatives at Sitting No. 533 of the
12th January, 2022.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

