

CHAPTER 378**CONSUMER AFFAIRS ACT**

To provide for the establishment and functions of the office of Director of Consumer Affairs and for the establishment of a Consumer Affairs Council and of tribunals to be known as the Consumer Claims Tribunals, and for other matters ancillary or consequent thereto.

23rd January, 1996

ACT XXVIII of 1994 as amended by Acts V of 1995, XIX of 1996, XXVI of 2000 and VI of 2001.

ARRANGEMENT OF ACT

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PART I

Preliminary

Short title.

1. The short title of this Act is the Consumer Affairs Act.

Interpretation.
Amended by:
V. 1995.20;
XXVI. 2000.2.

2. In this Act, unless the context otherwise requires -

"advertisement" 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 "advertising" shall be construed accordingly;

"consumer" means -

- (i) any individual who in transactions and other matters covered by this Act or any regulations made thereunder, is acting for purposes which are not related to his trade, business, craft or profession; and
- (ii) any other individual not being the immediate purchaser or beneficiary, and whether or not a member of the consumer's household, who having been expressly or tacitly authorised or permitted by the consumer, may have consumed, used or benefited from any goods or services provided to the consumer by a trader acting in the course of a trade, business, craft or profession, including goods or services provided as part of gift schemes and similar or analogous inducements; and
- (iii) any other class or category of persons whether natural or legal as may, from time to time, be designated as "consumers" for all or for any of the purposes of this Act by regulations made by the Minister after consulting the Council;

"consumer association" means a voluntary body of persons whose principal objective is the promotion of consumer protection or education;

"Council" means the Consumer Affairs Council established under Part II of this Act;

"Department" means the Department of Consumer Affairs;

"Director" means the Director of Consumer Affairs;

"goods" include any movable property, whether tangible or intangible, that may form the object of trade, including animals and fish of whatever species whether living or dead;

"Minister" means the Minister responsible for consumer affairs;

"ordinary court" for the purposes of Part III of this Act includes the Small Claims Tribunal established under the Small Claims Tribunal Act;

"permanent resident" means a person in whose favour a permit of residence has been issued in accordance with article 7 of the Immigration Act;

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"premises" means any place from where any trade or business is carried out including any stall or vehicle;

"qualifying body" means a registered consumer association and any other body whether constituted in Malta or otherwise as the Minister may, after consulting the Council, designate by notice in the Gazette;

"registered consumer association" means a consumer association registered in accordance with Part IV of this Act;

"services" includes the provision, in the course of or in furtherance of a trade, business, craft or profession, of any kind of educational, professional or instruction courses, facilities for entertainment, amusement, recreation, sports and cultural activities, beauty, health and nutrition-related programmes, hospital and nursing services, accommodation and analogous facilities, of any description, and the performance, in furtherance of a trade, business, craft or profession of any other type of work or action in return for a fee or reward;

"trader" means -

- (i) any person, including any body corporate or incorporate who in relation to any transactions or other matters covered by this Act or regulations made thereunder is acting for purposes relating to his trade, business, craft or profession;
- (ii) any person to whom article 4 of the Commercial Code applies:

Cap. 13.

Provided that the Minister after consulting the Council may from time to time by Order published in the Gazette, designate as a "trader" for all or any purposes of this Act, any category or class of persons and any body corporate or incorporate whether established by law or not. Any Order made by the Minister as aforesaid may by like Order be amended, substituted or revoked;

"terms" includes any condition or requirements in any contract, notice, guarantee or other statement, whether these are given verbally or in writing;

"Tribunal" means a Consumer Claims Tribunal set up under Part III of this Act.

PART II

Director of Consumer Affairs and the Consumer Affairs Council

Establishment of office of Director of Consumer Affairs.

3. (1) There shall be a Director of Consumer Affairs who shall be a public officer designated by the Prime Minister for that purpose.

(2) The functions of the Director of Consumer Affairs, (hereinafter in this Act referred to as "the Director") shall be to implement the policy established by the Minister, either personally or through public officers in the Department of Consumer Affairs and shall include -

- (a) to provide information and guidelines to the public on matters affecting the interests of consumers;
- (b) to monitor trading practices relating to the provision of goods and services to consumers, and to take measures for the suppression and prevention of any practices which may be detrimental to the interests of consumers;
- (c) to investigate complaints from consumers relative to the supply of goods and services and to take such action as is in his power to redress any justified grievance that may come to his notice;
- (d) to assist the Consumer Affairs Council in the performance of its functions and duties and to furnish such information as may be required by the Council in relation to the exercise of its duties; and
- (e) to perform any other function or duty that is or may be assigned to him under this Act or any other law.

(3) Nothing in this Act shall be construed to give any consumer a right to require the Director to give him advice on any specific or general matter or to act on his behalf and in his interest in any particular matter or dispute with any trader or supplier of services before any court, tribunal or elsewhere.

(4) The Director may in writing authorise any public officer serving with the Department, to perform any of the functions assigned to the Director under this Act or any other law.

Consumer Affairs Council.
Amended by:
XXVI. 2000.3.

4. (1) There shall be established a Council to be designated "the Consumer Affairs Council" having the functions and duties set out in this Act. The Council shall consist of a chairman, deputy chairman and five other members.

(2) The Minister shall appoint:

- (a) the chairman and four other members from among persons who, because of their experience, qualifications or activities, the Minister considers as being able to contribute towards the promotion of consumer interests;
- (b) the Director as deputy chairman; and

- (c) one member who, because of his experience, qualifications or activities, the Minister considers as being able to state the point of view of traders.

(3) One of the members, other than the chairman, mentioned in subarticle (2)(a) shall be appointed after consultation with those consumer associations, if any, registered under Part IV of this Act and the member mentioned in paragraph (c) of the same subarticle shall be appointed after consultation with those constituted bodies which the Minister considers to represent the interests of traders.

(4) The appointed members shall hold office for such term, not being more than three years, as may be specified in their letter of appointment and shall be eligible for re-appointment.

(5) Where the seat of any appointed member is vacated before the expiration of the term fixed in his letter of appointment, the Minister shall appoint another person to replace such member for such term, not being a term of more than three years, as the Minister may determine in his letter of appointment.

(6) The deputy chairman shall act instead of the chairman whenever the chairman is lawfully impeded or is absent from a meeting of the Council.

(7) A person shall not be eligible to be appointed a member of the Council, or to continue to be a member of the Council if such person -

- (a) is a member of the House of Representatives; or
- (b) is legally incapacitated or interdicted; or
- (c) has been declared bankrupt or has made a composition with his creditors; or
- (d) has been convicted of -
 - (i) any crime affecting public trust; or
 - (ii) theft; or
 - (iii) fraud; or
 - (iv) knowingly receiving property obtained by theft or fraud; or
 - (v) any offence contemplated in this Act, the Weights and Measures Ordinance, the Customs Ordinance, the Trade Descriptions Act, the Door-to-Door Salesmen Act or any law repealed by any of the said Acts or Ordinances or any law replacing the same.

Cap. 39.
Cap. 37.
Cap. 313.
Cap. 317.

(8) Notwithstanding any other provision of this article the Minister may at any time terminate the appointment of an appointed member, if in his opinion such appointed member is unfit to continue in office or has become incapable of properly performing his functions.

(9) The Minister shall appoint an officer serving in the public service to act as non-voting secretary of the Council.

Functions of the Council.

5. (1) It shall be the function of the Council -
- (a) to advise the Minister in the formulation of the policy to be followed by the Director in the exercise of his functions under this or any other law;
 - (b) to advise and assist the Minister on measures for the promotion and protection of consumer interests;
 - (c) to monitor and keep under review trading and business practices relating to the supply of goods and services to consumers and to activities related or ancillary thereto;
 - (d) at the request of the Minister to undertake or commission any study or research which may be necessary to promote consumer protection;
 - (e) to monitor the working and enforcement of laws that directly or indirectly affect the consumer in Malta;
 - (f) to draw up and review consumer protection directives and minimum service standards for submission to the Minister;
 - (g) to monitor the development of consumer associations in Malta, and draw up and review rules of practice for registered consumer associations for submission to the Minister;
 - (h) to examine and determine whether a consumer association has the requirements to be a registered consumer association in accordance with this Act; and
 - (i) to perform any other function or duty that may be assigned to it by the Minister or that may be assigned to the Council under this or any other law.
- (2) (a) The Council may, with the concurrence of the Minister, from time to time establish such advisory commissions as it may consider necessary to assist it in its functions.
- (b) The commissions shall have an advisory and consultative function, and their findings or recommendations shall not be binding on the Council or the Minister.
- (c) Each commission established under this subarticle shall consist of two or more persons nominated by the Council and an equal number of other persons nominated by organisations or individuals representing the interests of the branch or sector of trade or business in respect of which the commission is established. A commission shall in each case be chaired by a member of the Council.
- (d) A commission shall serve as a channel of communication between the branch or sector of trade or business in respect of which it is established and the Council, and shall endeavour to prevent and resolve possible situations of conflict of views and interests between traders and consumers in that particular

branch or sector.

6. (1) Subject to the provisions of this Act, the Council shall regulate its own procedure.

Conduct of
business of
Council.

(2) The Council shall meet as often as necessary but in no case less frequently than once every calendar month. Meetings shall be convened by the chairman or in his absence the deputy chairman, either on his own initiative, or at the request of three other members of the Council.

(3) A quorum at a meeting of the Council shall be constituted by the chairman, or in his absence the deputy chairman, and three other members.

(4) Decisions of the Council shall be taken by majority of votes of the members present and voting, the chairman shall have an original vote and in the event of equality of votes a second or casting vote.

(5) The Council may act notwithstanding any vacancy among its members.

(6) Any member of the Council who in any matter before the Council has any interest in conflict with his office as member of the Council shall disclose the nature of his interest and withdraw from any meeting of the Council during which the matter is discussed. Any such disclosure shall be recorded in the minutes.

7. (1) The Minister may, after consulting the Council, make regulations about any matter relating to consumer affairs in order to give fuller effect to the provisions of this Act, and in particular, but without prejudice to the generality of the aforesaid, may prescribe regulations -

Power to make
regulations.
*Substituted by:
XXVI. 2000.4.*

- (a) in relation to any aspect concerning the provision of any service, or the sale or hire of any goods offered or supplied to consumers; establishing minimum service standards and price indication requirements with regard to any such goods or services, and laying down any other requirements in order to improve price transparency and consumer information, and to promote easier comparison between different goods or services offered to consumers;
- (b) establishing rules of practice for registered consumer associations;
- (c) regulating advertising and similar practices in order to ensure that advertising and similar practices are fair and that they do not take undue advantage of consumers;
- (d) regulating trading stamps schemes, gift schemes, special offers, sale promotional activities and other similar schemes, arrangements and activities, by whatever name described or designated, connected with, ancillary or related to the provision of any service or the sale or hire of any goods to consumers

and other consumer transactions, including schemes involving the use and promotion of coupons, units, tokens, vouchers, points, stamps or any other form of reward, gift, membership, incentive, inducement or other benefit, whether in cash or in kind, and whether exchangeable, redeemable or otherwise, issued to or distributed to consumers in connection with, whether directly or indirectly, the purchase or hire of goods or services or other consumer transactions;

- (e) to regulate distance selling arrangements and the conclusion of agreements where the consumer and the trader are at a distance from each other, and for this purpose to set out the procedure for concluding distance selling agreements, to provide for the inclusion or exclusion of particular terms and conditions, to establish a cooling-off period for consumers, to lay down thresholds and exemptions, and to establish minimum consumer rights, and to introduce measures to make offers for such agreements more transparent and informative, and to regulate any other aspect of distance selling; and
- (f) to regulate consumer credit offers and the conclusion of agreements for the provision of credit terms and facilities by traders or other persons to consumers in the course of a trade, business, craft or profession in relation, directly or indirectly, to the sale or offer of goods, immovable property or services, to lay down the form and procedure for making consumer credit agreements, to stipulate and regulate the terms and conditions that may or may not be adopted in such agreements, to lay down thresholds and exemptions, the method of calculating the cost of credit, advertising, and other measures considered necessary or appropriate to establish minimum rights for debtors and to make credit offers more transparent and informative, and to regulate any other aspect of consumer credit arrangements.

(2) Regulations made under this section may also provide for the assignment of power and authority to the Director and to the Council, or to any of them, to control, monitor, keep under review or prohibit any scheme, agreement, activity or arrangement, including the power to authorise, require a licence, suspend, restrict and to order the amendment, prohibition, suspension, withdrawal or cancellation of any particular scheme, agreement, activity or arrangement, or of a particular class or category thereof, and to impose any conditions and requirements in connection therewith.

(3) Regulations made under this section may provide that any person who contravenes any provision of the regulations shall be guilty of an offence, and may prescribe penalties for such offences against any regulation, provided that the penalty for such offences shall in no case exceed a fine (*multa*) of more than two thousand liri. Different penalties may be prescribed for different offences.

8. (1) The Director may, with the concurrence of the Chairman in case of urgency, or of the Council, make or issue a public statement identifying and giving warnings or information about any of the following:

Public warning statements.
Amended by:
XXVI. 2000.5.

- (a) goods that are unsatisfactory or dangerous and persons who supply those goods;
- (b) services supplied in an unsatisfactory manner and persons who supply those services;
- (c) trading practices detrimental to the interests of consumers and persons who engage in such practices; and
- (d) any other matter that adversely affects or may adversely affect the interests of consumers in connection with the acquisition by them of goods or services from traders.

(2) When making a statement as is referred to in subarticle (1), the Director shall adhere to the principles of fairness and objectivity.

(3) The Government, the Director and any public officer acting on the instructions or authority of the Director, shall be exempt from any liability for acts done in good faith in pursuance of this article by the Director or any public officer as aforesaid. Such exemption shall extend to all persons publishing, printing, recording, broadcasting or communicating such information by any means whatsoever.

9. (1) A trader shall not without the written consent of the Director make or cause to be made any representation in any visual or aural form, either specifically or by implication, to the effect that:

Name of Council or Department not to be used in advertisement.
Amended by:
XXVI. 2000.6.

- (a) any goods or services supplied by any trader have the approval of any authority established under this Act; or
- (b) any activity carried out by any trader has the approval, or is conducted with the co-operation or assistance of any authority established under this Act.

(2) Where a trader's name, tradename, trademark, or the designation of any goods or services provided or supplied by a trader, appears in relation to a representation referred to in subarticle (1), that trader shall be deemed for the purposes of this article to have caused the representation to be made unless he proves that the representation was made without his knowledge or connivance.

(3) A trader convicted under this article shall be liable to a fine (*multa*) of not less than fifty liri and not more than one thousand liri.

10. Where an offence under this Act or any regulation made thereunder is committed by an employee or other person acting on behalf of a trader, the trader shall also be guilty of the offence

Liability of trader for acts of his employees, etc.

committed by the employee or other person acting on his behalf unless he can prove that he has exercised all reasonable diligence to prevent the commission of the offence by the employee or other person acting on behalf of the trader.

Confidentiality.

11. (1) A person who is or was at any time a member of the Council or of any advisory commission established under this Act, the Director, or a public officer with the Department shall not, save in the course of his duty or functions under this Act or any other law, or where it is competent to him to do so by reason of a provision of this Act or any other law, directly or indirectly communicate any information that came to his knowledge as a consequence of his holding that appointment or position.

(2) Nothing in subarticle (1) shall be construed as prohibiting the Director or any other public officer with the Department from communicating to a consumer whose complaint concerning any matter has been investigated by the Department, information concerning any matter which has come to his cognisance as a result of the investigation.

(3) Without prejudice to any other liability under any other law, any person who acts in breach of this article shall be liable on conviction to a fine (*multa*) of not less than fifty liri and not more than one thousand liri, or to a term of imprisonment not exceeding six months, or to both such fine and imprisonment.

Undertakings.
Amended by:
XXVI. 2000.7.

12. (1) 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, the Director may, at his discretion, instead of instituting proceedings against the trader under the relevant regulation, caution the trader and seek an undertaking in writing from the trader that he shall refrain from the conduct 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.

(2) The Director shall not institute proceedings against the trader where the trader shall have ceased to engage in the said conduct and has given the said undertaking.

(3) The Director shall maintain a register of undertakings made under this article, which register shall be kept at the principal office of the Department and the register may be seen by any person at such times as may be established by the Director.

(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 offence and shall, on conviction, be liable to a fine (*multa*) of not less than one hundred liri and not more than one thousand liri, and shall in any case remain bound by the undertaking for the remaining period of its term.

13. (1) Proceedings for any offence under this Act may only be instituted at the instance of the Director.

Proceedings.
Amended by:
XXVI. 2000.8.

(2) In any proceedings referred to in subarticle (1), the Director, or an official of the Department duly authorised to act in his stead, may, notwithstanding any provision of any other law, conduct the prosecution before the Court of Magistrates.

(3) Should the evidence of the Director or the official conducting the prosecution be required as part of the case of the prosecution, he shall be heard before any other witness, unless the necessity of his giving evidence arises later in the proceedings.

14. (1) Upon the request even verbal of the aggrieved consumer or of the prosecuting officer on his behalf, the court shall where the defendant is convicted for an offence against any regulation made under article 7, make a compensation order whereby defendant is ordered to pay to the aggrieved consumer as full or partial compensation -

Compensation
orders.

- (a) a sum not in excess of two hundred and fifty liri for any pecuniary loss, and
- (b) a sum of not less than fifteen liri and not more than one hundred liri as moral damages for any pain, distress, anxiety and inconvenience,

suffered by the aggrieved consumer as a result of the offence or arising therefrom.

(2) Any compensation ordered under subarticle (1)(a) shall be reduced from any amount which may be given in a judgment by a court or tribunal of civil jurisdiction with regard to the same matter.

(3) A request for the making of a compensation order shall not be made where such damages have been settled by agreement with the trader or where the aggrieved consumer has instituted a claim before a court or a tribunal of civil jurisdiction against the defendant in respect of the same matter.

(4) A compensation order made under this article shall be without prejudice to the right of the aggrieved consumer to institute civil action for the recovery of any sum due to him as damages so however that the sum covered by the compensation order shall be reduced from the total sum due by the defendant as damages.

(5) A compensation order made under this article shall be subject to appeal by the defendant in the same manner as an appeal from sentence.

(6) When the judgment in which a compensation order is made has become *res judicata*, the said compensation order shall be deemed to be an executive title for the purposes of the Code of Organization and Civil Procedure and shall be enforceable in the same manner as if it were a judgment of the Court of Magistrates (in each case in its inferior civil jurisdiction) of the island where the court making the compensation order is situate.

Cap. 12.

Prime Minister
may extend
operation of
articles 10, 12, 13
and 14 to other
laws.

15. (1) The Prime Minister may by order in the Gazette direct that the provisions of articles 10, 12, 13 and 14 shall apply to offences under any other law administered by the Director, or under any law whereby maximum prices for goods or services are fixed, or whereby minimum standards are fixed for goods or services.

(2) The provisions of articles 10, 12, 13 and 14 shall apply to offences under the laws referred to in article 43.

PART III

Consumer Claims Tribunal

Establishment of
tribunals.

16. (1) There shall be two tribunals to be styled "the Consumer Claims Tribunal (Malta)" and "the Consumer Claims Tribunal (Gozo)" respectively.

(2) The Consumer Claims Tribunal (Malta) shall, subject to the provisions of subarticle (3), have jurisdiction to hear and determine consumer claims where the transaction to which the claim refers has taken place in Malta, and shall hold its sittings in such place or places in Malta as the Minister may by order in the Gazette determine.

(3) The Consumer Claims Tribunal (Gozo) shall have jurisdiction to hear and determine consumer claims where the transaction to which the claim refers has taken place in the Islands of Gozo or Comino, and shall hold its sittings in such place in the Islands of Gozo and Comino as the Minister, in consultation with the Minister responsible for Gozo Affairs, may by order in the Gazette determine.

(4) For the purposes of subarticles (2) and (3) a transaction shall be deemed to have taken place:

- (a) in the case of a sale or a service which has been concluded or provided on the premises of the trader, in the island where those premises are situate;
- (b) in the case of a sale or a service which has been concluded or provided outside the premises of the trader:
 - (i) where the sale or the service was contracted by telephone, fax, correspondence or by any mechanical or electronic means of communication, and the trader did not himself approach the consumer and offer the sale of the goods or the supply of the service, in the island where the premises of the trader are situate;
 - (ii) in all other cases in the island where the goods were delivered or the service provided; so however that where the goods were delivered or the service provided partly in the Island of Malta and partly in the Island of Gozo or in the Island of Comino, or has taken place during a voyage

between the Island of Malta and the Island of Gozo or the Island of Comino, both tribunals shall have jurisdiction.

(5) Where in accordance with the provisions set out in subarticle (4), or in accordance with any rules made under article 27, it cannot be determined which tribunal has jurisdiction, the provisions of the Code of Organization and Civil Procedure to determine conflict of jurisdiction between the Court of Magistrates (Malta) in its civil jurisdiction and the Court of Magistrates (Gozo) in its inferior civil jurisdiction, shall *mutatis mutandis* apply. Cap.12.

17. (1) Each tribunal shall be presided by an arbiter sitting alone: Arbiters.

Provided that more than one arbiter may be appointed to sit in any of the said tribunals, but only one arbiter shall sit in any one case.

(2) Arbiters shall be appointed by the Prime Minister. No person shall be qualified to be appointed arbiter unless such person -

- (a) is a citizen of Malta over the age of thirty years; and
- (b) holds the warrant and has practised the profession of advocate in Malta for a period of at least five years.

(3) A person shall be disqualified to be appointed arbiter if such person -

- (a) is a member of the House of Representatives; or
- (b) is a member of a Local Council; or
- (c) is a trader; or
- (d) has been convicted of any of the offences referred to in article 4(7)(e).

(4) Arbiters shall receive such remuneration as the Prime Minister may by notice in the Gazette determine, and shall not be precluded from the exercise of their respective profession.

(5) Arbiters shall be appointed for a term of three years and shall be eligible to be re-appointed, for a further term or terms of three years each.

(6) In the exercise of his functions under this Act an arbiter shall not be subject to the control or direction of any other person or authority and may not be removed from office except by the Court of Appeal on an application for that purpose by the Prime Minister on the grounds of misbehaviour or inability to perform his functions by reason of infirmity of body or mind.

(7) The remuneration due to arbiters and the expenses in connection with the administration of the tribunals shall be paid out of the Consolidated Fund without the necessity of any further appropriation.

18. An arbiter shall abstain and may be challenged in the same circumstances as a judge of the superior courts. Abstention or challenge of arbiters.

Oath taken by
arbiter.

19. Every person appointed as an arbiter shall not assume the functions of his office unless and until he has taken before the Attorney General an oath to examine and decide the cases brought before him without delay, with impartiality, and equity according to law.

Jurisdiction of the
tribunal.
Amended by:
XXVI. 2000.9.

20. (1) A tribunal shall have jurisdiction to hear and determine claims made by consumers against traders where the value of the claim, exclusive of interests and costs, does not exceed one thousand five hundred liri, and where the claim relates to, arises out of or concerns, whether directly or indirectly -

- (a) the purchase or hire of goods by a consumer from a trader; or
- (b) the provision of services by a trader to a consumer.

(2) The jurisdiction of a tribunal shall not be exclusive, and it shall be at the option of the consumer whether to bring an action against a trader before a tribunal or before the ordinary courts; so however that -

- (a) where an action has been brought before a tribunal by a consumer, it shall not be competent for the consumer to bring an action arising out of the same claim also before the ordinary court; and
- (b) where an action has been brought before the ordinary courts by a consumer, or in a case brought by a trader against a consumer and the consumer sets forth a counter-claim, it shall be lawful for all the parties to the action, where the claim and the counter-claim if any are within the jurisdiction of a tribunal, by a joint note filed in the records of the case to request that court to transfer the case to a tribunal. Thereupon the ordinary court shall through the Registrar transfer a copy of the records of that case to the tribunal and shall refrain from taking further cognisance of the case. Registry costs in respect of the case before the ordinary courts shall in any such case be waived, and unless the parties otherwise agree in the note aforesaid, costs shall be determined in a like manner as if the case was withdrawn by the plaintiff:

Provided that a case shall not be transferred to a tribunal where the value of the claim or counter-claim determined as provided for in subarticle (1) exceeds one thousand five hundred liri; and

- (c) it shall be lawful for a trader to make a counter-claim against a consumer arising from a matter referred to in subarticle (1) before the tribunal in an action brought against him by a consumer.

Determination of
disputes before a
tribunal.

21. (1) A tribunal shall determine the issues in dispute in any claim or counter-claim before it according to the substantive merits and justice of the case, and in accordance with equity:

Provided that any question of prescription shall be

determined according to law.

(2) A tribunal may, when determining the issues in dispute in any claim or counter-claim before it, order the trader to pay to the consumer a sum of not less than fifteen liri and not more than one hundred liri as moral damages for any pain, distress, anxiety and inconvenience.

22. (1) An appeal shall lie from a decision of a tribunal by means of an application filed within eighteen working days from the date of the decision -

Appeals.
Amended by:
XXVI. 2000.10;
VI.2001.26.

- (a) in the case of an appeal from the Consumer Claims Tribunal (Malta) to the Court of Appeal (Inferior Jurisdiction) sitting in Malta; and
- (b) in the case of an appeal from the Consumer Claims Tribunal (Gozo) to the Court of Appeal (Inferior Jurisdiction) sitting in Gozo.

(2) An appeal shall only lie in accordance with subarticle (1) where the tribunal has acted contrary to the rules of natural justice, and such action has seriously prejudiced the rights of the appellant. Where the Court of Appeal (Inferior Jurisdiction) 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.

(3) The Minister responsible for justice may by 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.

Cap. 12.

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

23. (1) Subject to the provisions of any rules made in accordance with article 27 and to the provisions of subarticle (2), an arbiter shall regulate the proceedings before a tribunal as he thinks best suited to the ends of justice in accordance with the rules of natural justice.

Procedure.
Amended by:
XXVI. 2000.11.

(2) Subject to any rules referred to in subarticle (1) hereof, an arbiter -

- (a) shall ensure that a case is decided as far as is reasonably possible on the same day of the hearing;
- (b) shall inform himself in any manner he thinks fit and shall not be bound by the rules of best evidence or the rules relative to hearsay evidence if he is satisfied that the evidence before him is sufficiently reliable for him to reach a conclusion on the case before him;
- (c) shall refrain as far as possible from appointing

technical referees to give expert evidence, and shall where experts are appointed make out a list of points upon which the expert is to give evidence;

- (d) shall not be bound to give extensive reasons for his decisions but it shall be sufficient for him to list out the main points upon which his decision is based;
- (e) shall have the same power as a magistrate sitting in a Court of Magistrates (Malta) in its civil jurisdiction or in the Court of Magistrates (Gozo) in its inferior civil jurisdiction and in particular shall have power to summon witnesses and to administer an oath to witnesses; and
- (f) shall ensure evidence before the Tribunal shall in all cases be tendered on oath.

(3) No proceedings before a tribunal shall be invalid because of any non-observance of any formalities if there has been substantial compliance with the rules.

(4) (a) A claim shall, before being presented before a tribunal, be referred by the party making the claim to the Director or a registered consumer association who shall try to bring the parties into an agreement on the issues in dispute.

(b) If no agreement is reached on all the issues in dispute within fifteen working days from when the claim was referred to the Director or the registered consumer association, as the case may be, by the party, that party may then present its claim before the tribunal.

Cap. 108. (5) Witnesses shall be paid fees in accordance with the Witnesses (Fees) Ordinance.

Cap. 189. (6) The provisions of the Judicial Proceedings (Use of English Language) Act shall apply to a tribunal.

Applicability of this Part.

24. (1) The provisions of this Part shall apply to claims arising from sales made or services provided after the coming into force of this article, and it shall be a condition of any sale or provision of service after the coming into force of this article that the provisions of this Part shall apply to any claims arising therefrom:

Provided that it shall be lawful for a consumer and a trader to agree that this Part shall also apply to sales made, or services provided, before the coming into force of this article.

(2) It shall not be lawful for the parties to a transaction to which subarticle (1) refers, to derogate from any right given to a consumer under this Part.

Costs and enforcement.
Amended by:
XXVI. 2000.12.

25. (1) In any award the arbiter shall determine the costs that any of the parties is to pay to the other and unless special circumstances so warrant, the losing party shall be ordered to pay the costs of the party in whose favour the decision is awarded:

Provided that where the arbiter is satisfied that a claim presented before the Tribunal or any defence offered in respect thereof is vexatious or frivolous, he may order the claimant or the defendant, as the case may be, to pay to the other party a penalty of not more than fifty liri. Any such order shall be motivated and enforceable in the same manner as a decision of the Tribunal.

(2) Costs shall be limited to expenses made directly in connection with the case by the party in whose favour the payment of costs is awarded:

Provided that in no case shall costs be awarded in connection with any expenses consisting of legal fees or any fees however so called paid by any of the parties to advocates, legal procurators or any other person assisting the parties before the tribunal.

(3) A decision of a tribunal which has become *res judicata* may be enforced by the Court of Magistrates (Malta) in the case of a decision of the Consumer Claims Tribunal (Malta), and by the Court of Magistrates (Gozo) in its inferior civil jurisdiction in the case of the Consumer Claims Tribunal (Gozo) in the same manner as if the decision were a judgment of the respective court.

26. (1) There shall be a registry for each tribunal.

Registry, secretary
and deputy
secretary.

(2) The records of each tribunal shall be accessible to all persons, and copies shall be given on payment of the prescribed fee to any person on request.

(3) The acts and records of a tribunal shall be deposited and kept in any place as the Minister may, with the concurrence of the Minister responsible for justice, by order in the Gazette establish.

(4) The Minister shall appoint a secretary to each tribunal from among public officers serving with the Department.

(5) The secretary shall subject to such rules as may be made under this Part, have the same functions in relation to the tribunal as the Registrar of the Courts and the Archivist of the Courts have in relation to the superior courts.

(6) The Minister shall also appoint deputy secretaries from among public officers serving with the Department who shall, subject to rules made as aforesaid, have such duties as are assigned to them by the secretary in general and in particular as are performed by deputy registrars in the superior courts.

(7) Before assuming the functions of their office, a secretary and a deputy secretary shall take and subscribe to an oath before a Commissioner for Oaths to perform their duties fairly and impartially according to law.

27. The Minister may, with the concurrence of the Minister responsible for justice, make rules for the better functioning of the tribunals established under this Part and may without prejudice to the generality hereof make rules:

Rules.

(a) setting out the procedure before the tribunals or in

- appeals from the tribunals;
- (b) establishing the forms that are to be used in proceedings before the tribunals or in appeals from the tribunals;
 - (c) establishing rates of costs in proceedings before the tribunals;
 - (d) establishing the fees that may be due to the registry of the tribunal;
 - (e) setting out the duties of the secretaries and deputy secretaries; and
 - (f) prescribing anything that may or is to be prescribed in accordance with this Part.
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PART IV

Consumer Associations

Requirements for
registrations.
Amended by:
XXVI. 2000.13.

28. A registered consumer association is a consumer association which satisfies the Council that it complies with the following requirements:

- (a) that the association has a minimum paid up membership of one hundred members of majority age who are citizens of Malta or permanent residents in Malta;
- (b) that the statute of the association states in substance that the principal object of the association is to promote consumer protection, and to guide, inform and educate consumers;
- (c) that the statute makes provision for the association to be managed by persons freely elected by the members of the association in an election which is held at least once every calendar year;
- (d) that the association does not have the making of profit as one of its objects; and
- (e) that the association is independent of any other association, organisation or grouping whose principal object is not the protection of consumers.

Application for
recognition.

29. (1) Any consumer association wishing to be recognised as a registered consumer association shall submit to the Council the following:

- (a) an application on the appropriate form issued under the authority of the Council;
- (b) a complete updated copy of its statute duly certified by the person who holds the most senior executive post with the association;
- (c) a list of the association's members including their respective addresses and identity card numbers; and

(d) the official address of the association.

(2) The Council shall at its earliest opportunity examine and verify whether the association satisfies the requirements laid down in article 28. Where these requirements are satisfied, the Council shall register the applicant as a registered consumer association, and shall issue a certificate to the association confirming the registration of the said association and the date thereof.

(3) Where the Council determines that an association does not satisfy the requirements for registration, it shall within fourteen days from the date of its decision give notice thereof in writing to the applicant giving the grounds for such a decision.

(4) The Council may refuse to register a consumer association under a name or designation which it considers to be offensive or otherwise undesirable.

(5) A certificate issued by the Council to the effect that a particular consumer association is a registered consumer association which complies with all the requirements laid down under subarticle (1), shall be valid and conclusive evidence of the fact for all intents and purposes of law.

(6) No fees shall be charged in connection with the registration of a consumer association with the Council.

30. (1) The Council shall keep a register of all registered consumer associations, stating their names, dates of registration, number of members and any other particulars the Council may deem appropriate.

Register of
consumer
associations.

(2) The register shall be open to inspection by any person free of charge at any time and place as may be determined by the Council:

Provided that the identity of the members of a registered consumer association shall not be open to public scrutiny.

31. Every registered consumer association shall keep a fully updated record of the names, addresses and identity card numbers of its members.

Obligation to keep
records of
members.

32. (1) A registered consumer association shall submit to the Council all such returns and information on its membership and activities as the Council may from time to time require. Without prejudice to the foregoing, each registered consumer association shall in every calendar year not later than the end of March lodge with the Council a return of its membership as at the 31st December of the previous year.

Obligation to
submit information
to Council.

(2) A registered consumer association shall provide the Council with a copy of any amendments to its statute, which copy must be duly certified by the person holding the most senior executive post with the association. Any such amendment must be notified to the Council within fourteen days of its approval by the said association.

Council to publish annual list.

33. As soon as practicable after the lapse of each successive calendar year but not later than the end of May of each year, the Council shall publish for general information in the Gazette a list of the registered consumer associations duly registered as on the 31st December of the previous year.

False or misleading statement, etc.

34. Any person who knowingly or recklessly makes a false or misleading statement or declaration or otherwise gives any false or misleading information to the Council under any of the provisions of this Part shall, on conviction, be liable to a fine (*multa*) of up to one thousand liri or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

Exemption and privileges.

35. A registered consumer association shall enjoy the rights, benefits, privileges and exemptions granted by this Part for so long as it remains so registered and continues to comply with the requirements of this Part.

Exemption from liability.

36. (1) Notwithstanding the provisions of any other law, a registered consumer association and any of its officials acting on its behalf shall be exempt from any liability or responsibility whether civil or criminal, in respect of any publication, statement or other communication or activity, which is *bona fide* and is intended solely for the better information, education or protection of consumers. Such exemption shall extend to all persons publishing, printing, recording, broadcasting or communicating such information by any means whatsoever.

(2) For the purposes of subarticle (1), a publication, statement, communication or activity shall be deemed to be *bona fide* when it is not made or undertaken recklessly or maliciously, adheres to the principles of fairness and objectivity, and is not in contravention of any rules of practice made in accordance with article 7(1)(c).

(3) Any person alleging bad faith by a registered consumer association shall have the burden of proving such allegations.

Registered consumer associations and prosecutions.

37. (1) A registered consumer association may in its own name make reports or complaints to the competent authority on any breach of this Act, any law administered by the Director or any such laws or regulations as the Prime Minister may from time to time determine by notice published in the Gazette.

(2) In any prosecution by the competent authority made following a report or complaint under subarticle (1), a representative of the association shall be called to give evidence on the facts known to the association about the complaint or report and indicate to the court any evidence in respect of the charge of which it may be aware.

(3) In the course of the criminal proceedings made as a result of a report or complaint by the association, an official authorised by the association for this purpose shall be entitled to participate and assist in the prosecution of the said offences.

Exemption from income tax.

38. A registered consumer association shall be exempt from the payment of income tax.

39. The Minister may, acting on the advice of the Council, grant to any registered consumer associations such assistance and facilities as he may deem fit from time to time in order to enable them to exercise their functions.

Assistance to registered consumer associations.

40. (1) The Council may whenever it considers it to be necessary, consult with registered consumer associations on any matter relating to or arising from the supply of goods and services to consumers.

Consultation and initiatives with registered consumer associations.

(2) The Council may also undertake initiatives or campaigns jointly with registered consumer associations as it deems fit from time to time.

41. The Council shall cancel the registration of a registered consumer association in any of the following cases where:

Cancellation of registration.

- (a) a request for cancellation is made by the association;
- (b) it is satisfied that the association no longer complies with any of the requirements laid down in article 28;
- (c) for any reason, the statute regulating the association is not in conformity with the provisions of this Part;
- (d) it is satisfied that the association has ceased to exist or to function;
- (e) it is satisfied that sufficient proof exists that the registration of the association had been procured by fraud, negligence or serious mistake;
- (f) the association or anyone acting on its behalf is convicted under article 34; or
- (g) the association has repeatedly acted in breach of any rules of practice made under article 7(1)(c), or has in any matter of gravity acted even once in breach of such rules.

42. Nothing in this Part shall be construed as obstructing or limiting the right of persons to set up associations for the protection and promotion of consumer interests without qualifying in terms of article 28. In such a case an association which is not registered shall not have any right to consultation, assistance or recognition from the Council, or to any other right, privilege or exemption conferred by this Part upon registered consumer associations.

Other consumer associations.

PART V

*Added by:
XXVI. 2000.15.*

Declaration of Principles

43. (1) The principles stated in subarticle (2) shall not be directly enforceable in any court or tribunal, but shall be adhered to in the interpretation and implementation of this Act and any regulations made thereunder.

Consumer rights.
*Added by:
XXVI. 2000.15.*

(2) Consumers shall be entitled:

- (a) to have adequate access to basic essential goods and services at reasonable prices and to be able to choose from a diverse range of goods and services;
 - (b) to be protected against goods, production processes and services which are harmful to health;
 - (c) to have adequate access to information about goods or services which is clear, correct and does not mislead;
 - (d) to form and join consumer associations and to have consumer interests represented in the making and execution of government policy, and in the development of goods and services;
 - (e) to protection from unlawful or unfair trading practices;
 - (f) to receive a fair settlement of just claims including adequate compensation for misrepresentation, shoddy goods or unsatisfactory services; and
 - (g) to effective, quick and inexpensive means of redress in disputes they may have with traders.
- (3) A consumer may not waive any rights established in his favour by or under this Act.

PART VI

Unfair practices

Prohibited terms.
Added by:
XXVI. 2000.15.

44. (1) It shall be unlawful in consumer contracts to use unfair terms, or terms or combination of terms which are unfair in that they have as an object or effect any of the objects and effects referred to in subarticle (2), and any term prohibited as aforesaid inserted in any consumer contract shall be deemed never to have been so inserted.

(2) The terms referred to in subarticle (1) include terms which have the object or effect of -

- (a) excluding or limiting the liability of a trader by reason of his own fraud or gross negligence or that of his employees or agents, or by reason of any failure to fulfil an obligation constituting one of the fundamental elements of the contract;
- (b) establishing an unreasonably short period for notifying the trader of any defects;
- (c) excluding or limiting the legal rights of a consumer against the trader in the event of total or partial non-performance or inadequate performance by the trader of any of his contractual obligations;
- (d) prohibiting the consumer from offsetting a debt owed to the trader against a claim which the consumer may have against the same trader;
- (e) making an agreement binding on the consumer

whereas the provision of services or goods by the trader is subject to a condition whose realisation depends solely on the will of the trader;

- (f) allowing the trader to retain sums paid by the consumer if the consumer decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the trader where the trader is the party cancelling the contract;
- (g) requiring a consumer who fails to fulfil his obligation, to pay to the trader as compensation a sum which is disproportionately high to the value of the goods or services purchased or hired;
- (h) determining the compensation payable by a consumer who fails to fulfil his obligations, without providing for compensation of the same magnitude by the trader who fails to fulfil his;
- (i) limiting the means of proof which the consumer can use;
- (j) causing the consumer to waive any ground of claim against the trader in the event of a dispute;
- (k) prohibiting the consumer from seeking the cancellation of the contract if the trader fails to fulfil his obligations;
- (l) restricting the right of the consumer to cancel the contract if the trader, in connection with any guarantee or warranty given, does not fulfil his obligation or fails to do so within a reasonable period;
- (m) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
- (n) enabling the trader to alter the terms of a contract unilaterally, without a valid reason which is specified in the contract;
- (o) enabling the trader to alter unilaterally, without a valid reason, any characteristics of the product or service to be provided;
- (p) providing for the price of goods to be determined at the time of delivery by the trader or allowing him to increase the price without in any case giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;
- (q) causing the price to vary by reference to factors depending only on the will of the trader;
- (r) giving the trader the right unilaterally to determine whether the goods or services supplied are in conformity with the contract;
- (s) giving the trader the exclusive right to interpret any

term of the contract;

- (*t*) limiting or eliminating the obligation of the trader to respect commitments undertaken by his agents or employees;
- (*u*) obliging the consumer to fulfil his obligations where the trader does not perform his;
- (*v*) allowing the trader the possibility of transferring all his rights and obligations under the contract where this may serve to reduce the guarantees or warranties for the consumer, without the consent of the consumer;
- (*w*) providing for an immediate and final commitment by the consumer on signature of the contract, with the trader contracting subject to a condition the fulfilment of which depends only on the will of the trader; and
- (*x*) permitting the trader to establish or alter unilaterally the period for delivering goods or supplying a service.

(3) The Minister may, after consulting the Council, by regulations amend, substitute or revoke any of the terms listed in subarticle (2).

(4) The list of terms laid down in subarticle (2) is not an exhaustive list, and accordingly nothing contained in subarticles (1) and (2) shall be construed as limiting or otherwise prejudicing the generality of the provisions of article 45.

(5) In this Part, the term "goods" shall include immovable property.

Meaning of an
unfair term.
Added by:
XXVI. 2000.15.

45. (1) An unfair term means any term in a consumer contract, which on its own or in conjunction with one or more other terms -

- (*a*) creates a significant imbalance between the rights and obligations of the contracting parties to the detriment of the consumer; or
- (*b*) causes the performance of the contract to be unduly detrimental to the consumer; or
- (*c*) causes the performance of the contract to be significantly different from what the consumer could reasonably expect; or
- (*d*) is incompatible with the requirements of good faith.

(2) The unfairness of a term shall be assessed, taking into account the following:

- (*a*) the nature of the goods or services for which the contract was concluded;
- (*b*) the time of conclusion of the contract; and
- (*c*) all the circumstances attending the conclusion of the contract and all the other terms of the contract or of another contract on which it is dependent. Such circumstances may also include:

- (i) the bargaining power of the parties;
- (ii) whether a consumer was subjected to undue pressure; and
- (iii) whether the lack of knowledge or skill of a consumer was improperly taken advantage of.

(3) The provisions of articles 44 to 47 shall be applicable to contracts concluded or executed after the coming into force of these articles.

46. A consumer contract that includes a prohibited or unfair term shall not be binding on the consumer unless the contract is capable of continuing in existence without the unfair term.

Consequence of inclusion of unfair or prohibited term.
Added by:
XXVI. 2000.15.

47. (1) In any consumer contract, where all or some terms offered by a trader to a consumer are in writing, these terms shall be written in plain and intelligible language which can be understood by the consumers to whom the contract is directed.

Use of plain language in consumer contract.
Added by:
XXVI. 2000.15.

(2) Where any term is ambivalent or any doubt arises about the meaning of a term, the interpretation most favourable to the consumer shall prevail.

48. (1) Any form of misleading advertising is prohibited.

Misleading advertisements.
Added by:
XXVI. 2000.15.

(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.

(4) Any person who makes a misleading advertisement shall be guilty of an offence against this Part of this Act.

Meaning of comparative advertising.
Added by:
XXVI. 2000.15.

49. (1) "Comparative advertising" means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.

(2) Any person who makes an advertisement constituting comparative advertising other than as permitted under article 50 shall be guilty of an offence against this Act.

Permitted comparative advertising.
Added by:
XXVI. 2000.15.

50. (1) Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:

- (a) it is not a misleading advertisement in accordance with article 48 or otherwise;
- (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 features may include price;
- (d) it does not create confusion in the market place 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;
- (e) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;
- (f) for products with designation of origin, it relates in each case to products with the same designation;
- (g) 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; and
- (h) it does not present goods or services as imitations or replicas of goods or services bearing a protected mark or trade name.

(2) 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.

Offering gifts and prizes.
Added by:
XXVI. 2000.15.

51. A trader who, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services, offers gifts, prizes, or other free items -

- (a) fails to provide them or does not provide them as offered; or
- (b) fails to clearly disclose all the terms and conditions for

obtaining them; or

- (c) fails to give a clear and full description of the gifts, prizes or other free items being offered;

shall be guilty of an offence against this Part of this Act.

52. (1) All forms of pyramid selling schemes however described shall be prohibited. Schemes or activities in which a significant or material element consists of a pyramid selling activity shall also be considered as a pyramid selling scheme for the purposes of this article.

Pyramid selling schemes.
Added by:
XXVI. 2000.15.

(2) A person who establishes, operates or promotes a pyramid selling scheme shall be guilty of an offence against this Part of this Act.

(3) For the purposes of this article, the term "pyramid selling scheme" means -

- (a) a scheme -

that provides for the supply of goods or services or both for reward;

that to many participants in the scheme constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to supply goods or services; and

that is or is likely to be unfair to many of the participants in that scheme in that -

- (i) the financial rewards of those participants are principally dependent on the recruitment of additional participants, whether or not at successively lower levels; and

- (ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to the participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme; or

- (b) a scheme of the type similar to a chain letter scheme, whether or not it provides for the supply of goods or services, that is unfair to many of the participants in the scheme in that -

- (i) the financial rewards of many 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 many of the participants in the scheme.

(4) Participants, other than those referred to in subarticle (2), in any pyramid selling scheme shall be entitled not later than two

years from the date on which they have made the last payment to demand a full refund of any monies paid by them into the scheme.

Misleading representations about certain schemes or activities.
Added by:
XXVI. 2000.15.

53. (1) 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 and which that person represents as one that can be, or can be to a substantial extent, carried from a person's place of residence, shall be guilty of an offence against this Part of this Act.

(2) A person who invites, whether by advertisement or otherwise, persons to engage or participate, or to offer or apply to engage or participate, in schemes or activities referred in subarticle (1) requiring -

- (a) the performance by the persons concerned of works; or
- (b) the investment of money by the persons concerned and the performance by them of work associated with the investment

and makes, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in a material particular, shall be guilty of an offence against this Part of this Act.

Offences.
Added by:
XXVI. 2000.15.

54. A person who is guilty of an offence against this Part of this Act shall on conviction be liable to a fine (*multa*) of not less than two hundred liri and not more than two thousand liri.

Applicability over other laws.
Added by:
XXVI. 2000.15.
Cap. 16.
Cap. 13.
Cap. 313.

55. The provisions in this Part shall prevail over anything to the contrary contained in the Civil Code, the Commercial Code and the Trade Descriptions Act.

Added by:
XXVI. 2000.15.

PART VII

Liability for defective products

Interpretation.
Added by:
XXVI. 2000.15.

56. In this Part, unless the context otherwise requires:

"personal injury" includes any disease and any impairment of the physical or mental condition of a person;

"primary agricultural products" means any product of the soil, of stock-farming and of fisheries and game;

"product" means any movable and includes:

- (a) any movable incorporated into another product or into an immovable,
- (b) electricity,
- (c) gas, and
- (d) primary agricultural products;

"producer" means:

- (a) the manufacturer of a finished or processed product, or

- (b) the manufacturer of a component part, or
- (c) the producer of any raw material, or
- (d) the producer of any products of the soil, of stock-farming and of fisheries and game, or
- (e) any person who, by putting his name, trade mark or other distinguishing feature on the product, presents himself as its producer, or
- (f) where the product is manufactured or produced outside Malta, any person who imports into Malta a product for sale, hire, leasing or any other form of distribution.

57. The producer shall be liable for the damage caused wholly or partly by a defect in his product.

Liability of the producer.
Added by:
XXVI. 2000.15.

58. The injured party shall only have the onus of proving the damage, the defect and the causal relationship between the defect and the damage and shall not have the onus of proving the fault of the producer.

Proof of damage and defect.
Added by:
XXVI. 2000.15.

59. (1) The supplier of the product shall be treated as the producer if -

Liability of the supplier of the product.
Added by:
XXVI. 2000.15.

- (a) the producer cannot be identified and the injured party has asked the supplier to provide the identity and full address of the producer or of the person who supplied the supplier with the product, or
- (b) in the case of an imported product where the importer cannot be identified even if the name of the producer is indicated and the injured party has asked the supplier to provide the identity and full address of the importer or of the person who supplied the supplier with the product,

and the supplier fails to do so within thirty days from when the request was made to him.

(2) A request under subarticle (1) shall -

- (a) be in writing and sent by registered mail or official letter to the place of trade or business of the supplier; and
- (b) indicate the product that caused the damage, the place from where and, if possible the approximate date, when it was acquired.

(3) The supplier has the burden of proving that he provided the injured party with the information required under subarticle (1) within the period therein indicated.

60. (1) A product is defective if it fails to provide the safety which a person is entitled to expect, taking all circumstances into account including:

Defective product.
Added by:
XXVI. 2000.15.

- (a) the presentation of the product, how it was marketed,

and any directions and warnings provided,

- (b) the use to which it could reasonably be expected that the product would be put, and
- (c) the time when the product was put into circulation.

(2) A product shall not be considered defective only because a better product is subsequently put into circulation.

(3) A product shall be considered defective if it does not provide for the safety which is usually provided for by other models of the same type.

Damages that are recoverable.
Added by:
XXVI. 2000.15.

61. Damages that may be recovered under this Part are:

- (a) damages caused by death or by personal injury, or
- (b) loss of, damage to, or destruction of, any item of property other than the defective product itself, having a value of at least two hundred liri, or such other value that the Minister may prescribe:

Provided that -

- (i) the item of property is of a type ordinarily intended for private use or consumption, and
- (ii) the item of property was used by the injured party mainly for his own private use or consumption.

Defences a producer may raise.
Added by:
XXVI. 2000.15.

62. The producer shall not be liable under this Part if he proves -

- (a) that he did not put the product into circulation, or
- (b) that, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards, or
- (c) that the product was neither manufactured by him for sale or for any form of distribution for an economic purpose nor manufactured or distributed by him in the course of his business or trade, or
- (d) that the defect in question is due to compliance with a mandatory requirement imposed by law or by a public authority, or
- (e) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered, or
- (f) in the case of the manufacturer of a component or the producer of a raw material, that the defect is attributable to the design of the product in which the component has been fitted or the raw material has been incorporated or to the instruction given by the manufacturer of the product.

- 63.** The court may, notwithstanding any provisions of the Code of Organization and Civil Procedure, order that the fees of a referee be provisionally paid or deposited by the producer if there is *prima facie* evidence that the damage was caused by a defect in the product.
- 64.** Where under this Part, two or more persons are liable for the same damage, they shall be liable jointly and severally.
- 65.** Article 1051 of the Civil Code shall apply in determining the liability of the producer where the damage is caused by a defect in the product and by the fault of the injured person or by a person for whom the injured person is responsible.
- 66.** The liability of the producer shall not be reduced when the damage is caused both by a defect in the product and by the act or omission of a third party.
- 67.** (1) The action for damages under this Part shall be barred by the lapse of three years commencing from the day when the injured party became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer.
- (2) Notwithstanding subarticle (1), the action for damages under this Part shall in any case be extinguished upon the expiration of the period of ten years from the date on which the producer put into circulation the actual product which caused the damage unless the injured party has in the meantime instituted legal proceedings against the producer.
- (3) Sub-titles I, II and III of Title XXV of the Civil Code concerning the causes which prevent, suspend and interrupt prescription shall apply to actions made under this Part.
- (4) The burden of proving when the actual product which caused the damage was put into circulation shall lie on the producer.
- 68.** The liability of a producer under this Part may not be limited or excluded whether by any term of contract, by any notice or in any other manner whatsoever.
- 69.** The provisions under this Part shall not exclude or limit any rights or remedies available to the injured person under the Civil Code or any other law.
- 70.** The provisions under this Part shall not apply to injury or damage arising from nuclear accidents which are governed by any international agreement to which Malta is a party.
- 71.** This Part shall apply to products which are put into circulation in Malta after the coming into force of this Part.
- Provisional payment of referee.
Added by:
XXVI. 2000.15.
Cap. 12.
- Joint and several liability.
Added by:
XXVI. 2000.15.
- Contribution to damage by injured person.
Added by:
XXVI. 2000.15.
Cap. 16.
- Liability if there is an act or omission of a third party.
Added by:
XXVI. 2000.15.
- Limitation of action.
Added by:
XXVI. 2000.15.
- Cap. 16.
- Prohibition of exclusion of liability.
Added by:
XXVI. 2000.15.
- Other rights of action not precluded.
Added by:
XXVI. 2000.15.
Cap. 16.
- Damages arising from nuclear accidents.
Added by:
XXVI. 2000.15.
- Application of this Part.
Added by:
XXVI. 2000.15.

*Added by:
XXVI. 2000.15.*

PART VIII**Sale of goods to consumers**

*Interpretation.
Added by:
XXVI. 2000.15.*

72. (1) In this Part unless the context otherwise requires:

"commercial guarantee" means any representation or undertaking however described or given by a trader or a producer to a consumer, irrespective of whether given with or without an extra charge, to reimburse the price paid or to replace, repair or handle goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising;

"free of charge" refers to the exclusion of the costs incurred to bring the goods into conformity with the contract of sale, particularly of the cost of postage, labour and materials, which costs shall accordingly be borne by the trader;

"goods" means any tangible movable item of property;

"guarantor" means the person who is responsible to the consumer for the execution of a commercial guarantee and includes any other person acting for or on behalf of the guarantor;

"producer" means the manufacturer of consumer goods, the importer of consumer goods into Malta or any other country or group of countries as may, from time to time, be designated for this purpose by the Minister by notice in the Gazette, or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the goods;

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

(2) Contracts for the supply of consumer goods still to be manufactured or produced shall also be deemed contracts of sale for the purposes of this Part.

(3) The provisions of this Part shall be applicable to contracts of sale of goods to consumers concluded or executed after the coming into force of this Part.

*Conformity with
the contract.
Added by:
XXVI. 2000.15.*

73. (1) Traders are obliged to deliver to consumers, goods which are in conformity with the description and specifications in the contract of sale, and shall accordingly be obliged to ensure that the goods -

- (a) comply with the description given by the trader and possess the characteristics, features and qualities of the goods which the trader has promised or has shown or otherwise held out to the consumer as a sample or model;
- (b) are fit for the particular purpose for which the consumer requires them and which he made known to the trader at the time of conclusion of the contract;
- (c) are fit for the purpose for which goods of the same type are normally used; and
- (d) show the quality and performance which are normal in goods of the same type and which the consumer can

reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the trader, the producer or his representative, particularly in advertising or on labelling.

(2) The obligations of the trader under subarticle (1) at the time when the contract was concluded, shall lapse and cease in the following circumstances:

- (a) where the consumer was aware, or could not reasonably be unaware, of the lack of conformity, or
- (b) where the lack of conformity has its origin in materials supplied by the consumer.

(3) The trader shall be bound by public statements referred to in subarticle (1)(d) unless he -

- (a) shows that he was not, and could not reasonably have been, aware of the statement in question, or
- (b) shows that by the time of conclusion of the contract the statement had been corrected, or
- (c) shows that the decision to buy the goods could not have been influenced by the statement.

(4) Any lack of conformity resulting from incorrect installation of the goods shall be deemed to be equivalent to lack of conformity of the goods if the installation is part of the contract of sale of the goods and the goods were installed by the trader or under his responsibility. This shall also apply if the product, intended to be installed by the consumer, is installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

74. (1) The trader shall be liable to provide a remedy pursuant to this article to the consumer for any lack of conformity in the goods which existed at the time the goods were delivered by the trader to the consumer. Subject to the other provisions of this Part, it shall be for the consumer to decide which remedy to request.

Remedies available to consumer.
Added by:
XXVI. 2000.15.

(2) In the case of such a lack of conformity, the consumer shall be entitled either -

- (a) to have the goods brought into conformity free of charge by repair or replacement, in terms of article 75(1), or
- (b) to a refund of an appropriate reduction in the price or by having the contract rescinded with regard to those goods, in terms of article 76(1) or (2).

75. (1) Unless it is impossible or disproportionate, the consumer may, in the first instance, require the trader to repair the goods or else to replace them, in either case free of charge.

Repair or replacement of goods.
Added by:
XXVI. 2000.15.

(2) A remedy shall be deemed to be disproportionate if it imposes costs on the trader which, in comparison with the alternative remedies available under this Part, are unreasonable,

taking into account -

- (a) the value of the goods had there not been lack of conformity,
- (b) the significance of the lack of conformity, and
- (c) whether the alternative remedy could be completed without significant inconvenience to the consumer.

(3) Any repair or replacement shall be completed, as soon as practicable, within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.

Reduction of price or rescission of contract.
Added by:
XXVI. 2000.15.

76. (1) The consumer may require an appropriate reduction of the price or have the contract rescinded -

- (a) where the consumer cannot obtain either the remedy of repair or of replacement, or
- (b) if the trader has not completed the remedy of repair or replacement within a reasonable time, or
- (c) if the trader can only provide or complete the remedy of repair or replacement with significant inconvenience to the consumer.

(2) The consumer is not entitled to have the contract rescinded if the lack of conformity is minor or insignificant.

Right of redress of final seller.
Added by:
XXVI. 2000.15.

77. Where the trader as the final seller of goods is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the final seller shall be entitled to pursue remedies against the person or persons liable in the contractual chain.

Prescription.
Added by:
XXVI. 2000.15.

78. The trader shall be liable under the provisions of articles 73 and 74 where the lack of conformity becomes apparent to the consumer within two years from the delivery of the goods. This period of prescription shall be suspended for the duration of negotiations carried on between the trader and the consumer with a view to an amicable settlement.

Notification of trader.
Added by:
XXVI. 2000.15.

79. (1) In order to benefit from the remedies available under this Part, a consumer must notify the trader of any lack of conformity in writing within two months from the date on which the consumer detected such lack of conformity.

(2) For the purposes of this article, it shall be considered sufficient proof of notification if the notification is made by a judicial act within the prescribed period, or if the consumer shows that the letter was sent by registered mail within the prescribed period.

Presumption of existence of lack of conformity.
Added by:
XXVI. 2000.15.

80. Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery, where this presumption is broadly compatible with the nature of the goods or

the nature of the lack of conformity.

81. Any contractual clauses or agreement concluded by the consumer with the trader before the lack of conformity is brought to the attention of the trader, are not binding on the consumer if such clauses or agreement directly or indirectly waive or restrict the rights available under this Part.

Contractual clauses not binding if they waive or restrict rights.
Added by:
XXVI. 2000.15.

82. A commercial guarantee is an additional guarantee which places the beneficiary of such a guarantee in a more advantageous position than that established at law. A commercial guarantee shall not adversely affect other available remedies under any other law governing contractual or delictual liability.

Commercial guarantee to be more advantageous.
Added by:
XXVI. 2000.15.

83. (1) A commercial guarantee shall be drawn up in written form in a clear and legible manner, in plain language and it shall comply with the following:

Requirements for commercial guarantees.
Added by:
XXVI. 2000.15.

- (a) be formulated in at least one of the official languages of Malta;
- (b) set out 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 manner how a consumer is to proceed to make a claim and to obtain execution of the commercial guarantee, the person authorised to execute the commercial guarantee and an address in Malta where claims may be sent. 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;
- (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) provide a clear description of the goods or services covered under the commercial guarantee;
- (g) clearly stipulate what the guarantor undertakes to do if there is a defect in the goods covered by the

commercial guarantee or if the services covered by the guarantee are not properly carried out; and

- (h) state clearly that the consumer enjoys certain rights at law in relation to the sale of goods to consumers and that those rights are not adversely affected by the guarantee.

(2) At the request of the consumer, the trader shall make available to the consumer the commercial guarantee in writing or in another durable medium accessible and available to the consumer.

(3) Where a commercial guarantee does not comply with the requirements set out in this article, the validity of the guarantee shall not be affected and the consumer shall remain entitled to claim under it and require that it be honoured.

Liability under a commercial guarantee.
Added by:
XXVI. 2000.15.

84. Where a trader or any other person gives a commercial guarantee to a consumer, irrespective of when or how it is given, then that trader 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, unless that trader or other person, as the case may be, proves that he had expressly and clearly informed the consumer to the contrary at the time of the delivery of the goods or performance of the service.

Commercial guarantee shall not exclude rights under other laws.
Added by:
XXVI. 2000.15.

85. (1) A commercial guarantee and any rights granted to a consumer under the guarantee shall not in any way, whether directly or indirectly, exclude or limit the rights of a consumer under this Act or under any other law. Any such exclusion or limitation stipulated in violation of this prohibition shall be null and ineffective.

(2) The provisions in this Part shall apply in all cases where the contract for the sale of goods to a consumer has been concluded in Malta or otherwise has a close connection with Malta, or such other countries 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. Accordingly the rights arising in favour of consumers under this Part shall remain applicable and shall not be affected by the adoption of the law of a country not falling under the provisions of this Part.

Guarantor may ask only for charges as stipulated.
Added by:
XXVI. 2000.15.

86. A guarantor may not, when performing or executing a commercial guarantee, request a consumer to pay any fee or any charge however designated, unless this had been expressly and clearly stipulated in the commercial guarantee.

Cost of carriage.
Added by:
XXVI. 2000.15.

87. The guarantor shall assume the cost of any carriage incurred in respect of the performance of a commercial guarantee unless otherwise stipulated in the commercial guarantee.

Extension of commercial guarantee.
Added by:
XXVI. 2000.15.

88. The duration of a commercial guarantee shall be automatically extended for a period equal to the time during which the guarantor had the goods or part of the goods in his possession in order to perform or execute the commercial guarantee or as a result of the recall of the goods or part thereof by the manufacturer.

- 89.** The designation by the guarantor of a third person to execute a commercial guarantee does not free the guarantor from the obligation towards the consumer pursuant to the commercial guarantee given to the consumer. Guarantee by a third person.
Added by:
XXVI. 2000.15.
- 90.** A commercial guarantee whether about goods or services that is mentioned in a statement or advertisement by any person shall be binding on that person even if such a commercial guarantee is not specifically mentioned in the contract of sale. Commercial guarantee stated in advertisement.
Added by:
XXVI. 2000.15.
- 91.** (1) Without prejudice to any other remedies at law, a consumer may institute civil proceedings against a guarantor who fails to observe any of the terms or undertakings stipulated in a commercial guarantee. Rights of action under commercial guarantee.
Added by:
XXVI. 2000.15.
- (2) The court may in any civil proceedings instituted under this Part -
- (a) order the guarantor to take such remedial action as may be necessary to observe the terms of the guarantee, or
 - (b) order the guarantor to perform his obligations under the commercial guarantee to its satisfaction within such period as the court may establish. In doing so the court may order the guarantor to pay to the consumer a sum not exceeding fifty liri for each day of default in case of non-compliance after the lapse of the period established by the court.
- 92.** The provisions of this Part where they are more favourable to the consumer, shall prevail over the provisions of any other law. Provisions to prevail over other laws.
Added by:
XXVI. 2000.15.
- 93.** (1) If the goods being the object of a contract of sale 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 trader to the consumer. Replacement parts, repair service where goods require maintenance.
Added by:
XXVI. 2000.15.
- (2) The trader or the producer may release himself from this obligation by specifically and expressly warning the consumer in writing, before the contract is entered into, that he does not supply replacement parts or repair service.

PART IX

Added by:
XXVI. 2000.15.

Compliance orders

- 94.** (1) Where he feels it reasonably appropriate or necessary in the public interest, the Director may, of his own initiative or on a written application to him by a qualifying body, issue a compliance order - Issue of compliance orders.
Added by:
XXVI. 2000.15.
- (a) on any person requiring -
- (i) the deletion or alteration of terms in a consumer

-
- contract which the Director considers to be unfair to consumers in accordance with the provisions of Part VI of this Act; and
- (ii) the incorporation of terms in a consumer contract which the Director considers to be necessary for the better information of consumers, or for preventing a significant imbalance between the rights and obligations of the parties, and this to the benefit of consumers;
- (b) requiring any person engaging, promoting or undertaking, or proposing to engage in or undertake or promote any advertising which is misleading or is not permitted comparative advertising in terms of Part VI of this Act, to discontinue or refrain from such advertising;
- (c) requiring any person to take any measures specified in the compliance order, within the time specified in the compliance order to ensure that this Act or any regulations made thereunder or any other law dealing with consumer rights and protection as may be designated by Order in the Gazette by the Minister acting after consulting the Council, are complied with; and
- (d) requiring any person to cease or desist from committing an offence against this Act or any regulations made thereunder or of any other law dealing with consumer rights and protection as may be designated by Order in the Gazette by the Minister after consulting the Council.
- (2) The Director shall, when issuing a compliance order under this article -
- (a) serve a copy of the compliance order on each person against whom the order is made;
- (b) include with the compliance order, information about the right to institute an action before the court in accordance with article 97; and
- (c) briefly state his reasons for issuing the compliance order, which reasons shall be notified to each person against whom the compliance order is issued and, if any, to the qualifying body on whose application the compliance order is issued.
- (3) No precautionary warrant or other order under any other law shall be issued by any court or tribunal restraining or restricting the Director from issuing a compliance order under this Act.
- (4) A qualified body, when making an application under this Part, is not required to have or to prove an interest in, or be affected by, the matter or act in issue.

95. (1) It shall be at the discretion of the Director whether or not to issue a compliance order after a written request by qualifying body has been made to him in terms of article 94.

Discretion of Director to issue a compliance order.
Added by:
XXVI. 2000.15.

(2) If the Director decides not to issue a compliance order after an application has been made to him by a qualifying body, he shall, within seven days from the date of his decision, notify in writing the qualifying body and the persons against whom the compliance order is requested with his decision stating his reasons therefor.

(3) A qualifying body may within fifteen days from the date of notification upon it of the decision of the Director not to issue a compliance order, institute an action before the Courts of Magistrates in their civil jurisdiction for the issue of an order requiring the Director to issue a compliance order under article 94. The persons against whom the compliance order is requested to be made shall be parties to the suit, and it shall be the duty of the qualifying body to notify such persons accordingly.

(4) In exercising his functions and powers under this Part the Director shall in all cases act as expeditiously as possible. In the case of an application by a qualifying body, the Director shall give his decision within fifteen days from receipt of the application.

96. A compliance order shall come into force with immediate effect.

Compliance order to take immediate effect.
Added by:
XXVI. 2000.15.

97. (1) A person against whom a compliance order has been made may, 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. Such action may be made only on the following grounds:

Application for revocation of a compliance order.
Added by:
XXVI. 2000.15.

- (a) on a material point of law; or
- (b) if the making of a compliance order is grossly unreasonable or unjustified.

(2) The court may confirm, change or cancel the compliance order on any terms or conditions it considers appropriate.

(3) Where an action is instituted under subarticle (1), the compliance order shall be stayed pending the outcome of the case. The Director may however, if he considers it appropriate or necessary in the public interest, request the court to make an order, hereinafter referred to as an interim compliance order, ordering that the compliance order may subject to such modifications as the court may in the interim compliance order determine, continue in force pending the final determination of the case instituted in accordance with subarticle (1). An interim compliance order shall expire upon the final determination of the case.

(4) A person against whom a compliance order has been made may not institute an action before the court in terms of this article if he has already been made a party to the suit in terms of article 95.

Cases to be heard and determined with urgency.

Added by:
XXVI. 2000.15.

No need to prove actual loss, etc.

Added by:
XXVI. 2000.15.

Director to seek voluntary compliance.

Added by:
XXVI. 2000.15.

Director may require publication.

Added by:
XXVI. 2000.15.

98. Actions instituted under articles 95 and 97 shall be heard and determined by the court with urgency and as expeditiously as possible.

99. The Director, when issuing a compliance order under article 94, shall not be required to prove -

- (a) actual loss or damage, or
- (b) actual recklessness, negligence or fault on the part of the person against whom the order is made.

100. The Director shall, whenever he considers it to be possible and reasonable to do so, seek first to achieve voluntary compliance by the person or persons involved, with this Act or regulations made thereunder or with 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, before proceeding for the issue of a compliance order under article 94.

101. The Director, 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, may by notice in writing require 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
- (b) to publish a corrective statement in relation to any contravention 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;

Publication shall be made in at least two daily newspapers within seven days from receipt of the notice and 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.

Added by:
XXVI. 2000.15.

PART X

Enforcement

Production of written authorisation.

Added by:
XXVI. 2000.15.

102. The Director may 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 when required, produce the written authorisation signed by the Director.

103. (1) For the purpose of discharging his functions under this Act, the Director may -

Entry of inspection.
Added by:
XXVI. 2000.15.

- (a) enter and search any premises other than premises used exclusively as a place of residence;
- (b) make any inspection, conduct any test and on paying or making tender therefor, take any goods; and
- (c) take any books, documents or records however kept or stored.

No entry and search shall be effected between seven in the evening and seven in the morning, unless the Director has reason to believe that delay could cause the loss of necessary information.

(2) Where the Director takes any book, document or record under this article, he may retain that book, document or record -

- (a) for as long as it is necessary to enable it to be inspected and copies of extracts from it to be made or taken, or
- (b) if it is required as evidence in proceedings for an offence under this Act or any regulations made thereunder.

(3) The Director shall give to the person from whom anything has been taken, a receipt for what has been taken.

(4) If the Director keeps the original of any book, document or record, he shall allow the owner thereof to have reasonable access thereto or to a copy thereof as soon as practicable.

(5) Nothing in this Part shall be deemed to detract from the powers of the Police under the Criminal Code or any other law.

Cap. 9.

(6) In the course of any entry and search under this Part, the Director may request the assistance of the Police.

104. (1) The Director may, for the purpose of discharging his functions under this Act, require any person to provide any information in any manner, including:

Obtaining information.
Added by:
XXVI. 2000.15.

- (a) by answering any questions, orally or in writing; or
- (b) by producing any books, documents or other records as the Director may consider to be necessary.

(2) A person shall not be required to answer any question if the answer may subject him to criminal proceedings.

105. Any person who -

Obstruction of Director.
Added by:
XXVI. 2000.15.

- (a) wilfully obstructs, assaults, threatens, resists or interferes with the Director or a public officer in the exercise of his duties under this Part, or attempts so to do; or
- (b) uses threatening, abusive or insulting language to the Director or a public officer in the course of his duties under this Part,

shall on conviction be guilty of an offence against this Act.

Offences.
Added by:
XXVI. 2000.15.

106. (1) Any person who -

- (a) fails to comply with a compliance order issued under this Act or regulations made thereunder;
- (b) refuses or fails to furnish information as required under this Part or else provides false or misleading information,

shall be guilty of an offence against this Act.

(2) A person guilty of an offence against this Act or of any regulation made thereunder shall, unless a different punishment is prescribed therefor, on conviction be liable to a fine (*multa*) of not less than one hundred liri and not more than ten thousand liri.

(3) The court may also order any person to pay a fine (*multa*) of not more than fifty liri for each day of non-compliance with an order of the Director made under this Act.

Court order.
Added by:
XXVI. 2000.15.

107. Where the court finds that a person has committed an offence under this Act or regulations made thereunder, the court may, without prejudice to any other order it may make under any other law -

- (a) order the restitution of any money, property or other consideration given by the consumer;
- (b) make an order of specific performance against that person; and
- (c) make any other order the court considers appropriate.

Prescription of
offences under this
Act.
Added by:
XXVI. 2000.15.

108. The prosecution of an offence under this Act shall be prescribed by the lapse of three years from the date on which the offence is alleged to have been committed.

Exemption from
liability.
Added by:
XXVI. 2000.15.

109. The Director or any public officers acting under his direction or control or any member of the Council in the performance of their functions under this Act, or any regulations made thereunder, shall not be liable for any loss or damage suffered by any person by reason of anything done or omitted to be done in good faith in the course of the administration of this Act or any regulation made thereunder.

Service of orders
or notices under
this Act.
Added by:
XXVI. 2000.15.

110. (1) Where an order or notice is required or authorised to be served under this Act, it shall be served in any of the following manners:

- (a) by delivering it, or by sending it by registered mail to the person on whom it is to be served at his place of residence, office or place of work; or
- (b) in the case of a body corporate or other body of persons, by delivering it to an officer or servant thereof at the registered office or any other place of business, or sending it in a registered letter addressed to any such office.

(2) In any case where it is not reasonably possible to effect service in any manner stated in subarticle (1) of this article, the

Director may effect service by publishing a summary of such notice in the Gazette and any two daily newspapers.

PART XI

*Amended by:
XXVI. 2000.14.*

Miscellaneous

111. The Director shall be responsible for the administration of the Trade Descriptions Act and the Door-to-Door Salesmen Act.

Director to administer certain laws.

*Amended by:
XIX.1996.10;
XXVI. 2000.14.
Cap. 313.
Cap. 317.*
