

SUBSIDIARY LEGISLATION 378.08**DISTANCE SELLING REGULATIONS**

4th September, 2001

LEGAL NOTICE 186 of 2001.

1. The title of these regulations is the Distance Selling Regulations. Citation.

2. In these regulations, unless the context otherwise requires - Interpretation.
"the Act" means the Consumer Affairs Act; Cap. 378.

"commercial guarantee" shall have the same meaning as under the Act;

"consumer" shall have the same meaning as under the Act;

"Council" means the Consumer Affairs Council;

"distance contract" means any contract concerning goods or services concluded between a trader and a consumer under an organised distance sale or service provisions scheme, arrangement, undertaking or similar activity run or operated by the trader, who for the purpose of the contract, makes exclusive use of one or more means of distance communication up to, and including, the moment when the contract is concluded;

"distance contract solicitation" means any distance communication, whether public or personalised, and includes all the necessary elements to enable the consumer to enter directly into a contractual commitment, so however that the forms of advertising that do not include the elements necessary for the consumer to enter directly into a contractual relationship shall not be considered as distance contract solicitations;

"means of distance communication" refers to any means which, without the simultaneous physical presence of the trader and the consumer, may be used for the purposes of the conclusion of a contract between those parties as contained in the First Schedule;

"Minister" means the Minister responsible for consumer affairs;

"operator of a means of communication" means any person whose trade, business or profession involves making one or more means of communication at a distance available to traders;

"trader" shall have the same meaning as under the Act.

3. (1) These regulations shall not apply to contracts - Exemptions.

(a) concluded by means of automatic vending machines or automated commercial premises;

(b) concluded with telecommunications operators through the use of public payphones;

(c) concluded for the construction and sale of immovable property or relating to other immovable property rights, except for rental;

- (d) concluded at an auction; and
 - (e) relating to financial services such as those contained in a list in the Second Schedule.
- (2) Regulations 4, 5, 6 and 7(1) shall not apply to contracts -
- (a) for the supply of foodstuffs, beverages, or other goods intended for current consumption supplied to the home of the consumer, to his residence or to his workplace by regular roundsmen;
 - (b) for the provision of services with respect to accommodation, transport, catering or leisure, where the trader undertakes, when the contract is concluded, to provide such services on a specific date or within a specific period.

Prior information.

4. (1) In good time before the conclusion of any distance contract, the trader shall, in a clear and comprehensible manner appropriate to the means of distance communication used, provide the consumer with the following information:

- (a) the full name and the permanent address of trade or business of the trader;
- (b) a description of the main characteristics of the goods or services;
- (c) the price of the goods or services including any taxes or any charges due;
- (d) delivery costs, where appropriate;
- (e) the arrangements for payment, delivery or performance;
- (f) the existence of the right of cancellation by the consumer, except in the cases referred to in regulation 6(5);
- (g) the cost of using the means of distance communication, where it is calculated at a rate higher than the basic rate;
- (h) the period for which the offer or the price remains valid; and
- (i) where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently:

Provided that the information required under this subregulation shall be given in accordance with the principles of good faith in commercial transactions, and no improper advantages shall be taken of any inability of the consumer due to age, infirmity or otherwise. The trader shall in any case always make clear the commercial purpose of the information given.

(2) A contract concluded during the course of a telephone communication shall, at the option of the consumer, be unenforceable against the consumer unless at the beginning of the

conversation the trader makes his identity and the commercial purpose of the call explicitly clear to the consumer.

(3) In case of dispute it shall be for the trader to prove that he had provided the consumer with all such information required by subregulations (1) and (2).

5. (1) A contract to which these regulations apply shall, at the option of the consumer, be unenforceable against the consumer unless the trader has provided the consumer with written confirmation or confirmation in another tangible medium available and accessible to the consumer of the information referred to in regulation 4(1)(a) to (f) either -

Written confirmation of information.

- (a) prior to the conclusion of the contract, or
- (b) in good time during the performance of the contract, and at the latest at the time of delivery where goods not for delivery to third parties are concerned.

(2) No contract to which these regulations apply shall be enforceable against the consumer unless the trader has provided the consumer with the following:

- (a) written information on the conditions and procedures for exercising the right of cancellation under regulation 6, including the cases referred in regulation 6(5)(a);
- (b) the full name and the permanent address of trade or business of the trader to which the consumer may address any complaints;
- (c) information on after-sales services and commercial guarantees which exist; and
- (d) the concluding date for cancelling the contract, where it is of an unspecified duration or of a duration exceeding one year.

(3) Subregulation (1) shall not apply to services which are performed by the use of a means of distance communication, where they are supplied on only one occasion and are invoiced by the operator of the means of distance communication. Nevertheless, the consumer shall in all cases be entitled to obtain the permanent address of the place of trade or business of the trader to whom he can address any complaints.

(4) In case of dispute, it shall be for the trader to prove that written confirmation of the information which he is required to provide under subregulations (1) and (2) has been provided to the consumer.

6. (1) A consumer may within fifteen days cancel any distance contract without incurring any penalty and without giving any reason. The period for the exercise of this right shall begin -

Right of cancellation.

- (a) in the case of goods, from the day of receipt by the consumer where the obligations laid down in regulation 5(1) and (2) have been fulfilled;

(b) in the case of services, from the day of conclusion of the contract or from the day on which the obligations laid down in regulation 5(1) and (2) were fulfilled if they are fulfilled after the conclusion of the contract, on condition that this period does not exceed the three month period referred to in subregulation (2).

(2) If the trader has failed to fulfil the obligations laid down in regulation 5(1) and (2), the period shall be three months, which period shall begin -

(a) for goods, from the day of receipt by the consumer; and

(b) for services, from the day of conclusion of the contract:

Provided that if the information referred to in regulation 5(1) and (2) is supplied within such three month period, the fifteen day period during which the consumer shall have the right to cancel the distance contract shall commence from the moment that the information is supplied.

(3) Where the consumer has exercised his right of cancellation under this regulation, the trader shall be obliged to reimburse any sums paid by the consumer. Such reimbursement shall be carried out as soon as possible and in any case within thirty days.

(4) The only charge that may be made to the consumer if he exercises his right to cancel under this regulation is the direct cost of returning the goods.

(5) Unless the parties have otherwise agreed, the consumer may not exercise his right to cancel under subregulation (1) in respect of contracts -

(a) for the provision of services, if performance has begun, with the consent of the consumer before the end of the fifteen day period referred to in subregulation (1);

(b) for the supply of goods or services the price of which depends on fluctuations in the financial market which cannot be controlled by the trader;

(c) for the supply of goods made-to-measure to the specifications of the consumer and are clearly personalized or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly;

(d) for the supply of audio or video recording or computer software which are unsealed by the consumer;

(e) for the supply of newspapers, periodicals and magazines; and

(f) for gaming and lottery services.

Performance of a distance contract.

7. (1) Unless the parties have otherwise agreed, the trader must execute the order within a maximum of thirty days from the day following that on which the consumer forwarded his order to

the trader.

(2) Where a trader fails to perform his part of the contract because the goods or services ordered are unavailable, the consumer must then be informed of this situation and the consumer shall be entitled to obtain from the trader a refund of any sums paid as soon as possible and in any case not later than thirty days.

8. A trader who, in soliciting custom, uses any of the following means of distance communication without having first obtained the consent of the consumer, being -

- (a) facsimile machine (fax),
- (b) automatic calling units,

shall be liable to compensate the consumer for any inconvenience caused and resultant damages suffered.

9. A consumer may ask a trader not to make any distance contract solicitation addressed to him. If the trader persists in doing so after having been asked by the consumer to desist, such trader shall be liable to compensate the consumer for any inconvenience caused and any resultant damages suffered.

10. A distance contract concluded with a minor, or a person who is interdicted or incapacitated in accordance with the Code of Organization and Civil Procedure shall be null and without effect.

11. (1) If a consumer exercises the right to cancel a distance contract under these regulations and the goods or services were purchased by him on credit, then the credit agreement, if any, concluded with the trader shall also be cancelled if:

- (a) the credit has been provided directly by the trader, or
- (b) the credit has been provided by a third party, on the basis of a prior agreement with the trader under which the third party provided the credit to the consumer for the purpose of acquiring the goods or services provided by the trader.

(2) The consumer shall incur no penalty if he cancels a credit agreement in accordance with this regulation.

12. (1) The consumer shall be entitled to cancel a payment where fraudulent use has been made of his credit card in connection with a distance contract to which these regulations apply.

(2) The consumer shall be entitled to be recredited with all sums debited as a result of the fraudulent use of his credit card in connection with a distance contract to which these regulations apply.

13. In any dispute as to -

- (a) the content of the information supplied to the consumer in accordance with regulation 4(1) prior to the conclusion of any distance contract;
- (b) the existence of a prior request by a consumer in accordance with regulation 9;

Restriction on the use of certain means of distance communication.

Consumer may ask trader not to make solicitations.

Distance contracts cannot be concluded with minors, etc. Cap. 12.

Cancellation of credit agreements.

Payment by card.

Burden of proof.

- (c) the consent of the consumer to a distance contract; or
- (d) the compliance by the trader with the time limits prescribed under these regulations,

the burden of proof shall lie with the trader.

Unsolicited goods and services.

14. (1) A consumer shall not be liable to pay a trader for any unsolicited goods or services or both together supplied to him by a trader.

(2) A consumer may treat any unsolicited goods or services supplied to him by a trader as if they were an unconditional gift to him, and any right of the trader thereto shall be terminated.

(3) A trader who makes a demand for payment, or asserts a present or prospective right to payment, for what he knows are unsolicited goods or services to a consumer with a view to the consumer acquiring such goods or services, shall be guilty of an offence.

(4) A trader who with a view to obtaining any payment for what he knows or ought to know are unsolicited goods or services:

- (a) threatens to bring any legal proceedings;
- (b) places or causes to be placed the name of a consumer on a list of defaulters or debtors, or threatens to do so; or
- (c) invokes or causes to be invoked any other collection procedure, or threatens to do so,

shall be guilty of an offence.

Trader who persists in supplying unsolicited goods, etc.

15. A trader who persists in supplying unsolicited goods or services after the consumer has informed him, even verbally, that such goods or services are not required, shall be guilty of an offence.

Applicability of Parts IX and X of the Act.

16. Parts IX and X of the Act shall apply to these regulations as if references to the Act or Parts thereof were references also to these regulations.

Offences and penalties.

17. (1) Any person who fails to comply with these regulations, which failure constitutes an offence, shall be liable on conviction to a fine (*multa*) of not less than one hundred liri but not exceeding two thousand liri, and to a fine (*multa*) of not less than twenty-five liri and not exceeding fifty liri for every day during which the default continues.

(2) Where an offence under these regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, manager, secretary or other similar officer of such body, or of any person who was purporting to act in any such capacity, both that person, as well as such body, shall be guilty of an offence under these regulations.

FIRST SCHEDULE

(Regulation 2)

Means of Distance Communication

1. Unaddressed printed matter
2. Addressed printed matter
3. Standard letter
4. Press advertising with order
5. Catalogue
6. Telephone with human intervention
7. Telephone without human intervention (automatic calling machine, audiotext)
8. Radio
9. Videophone (telephone with screen)
10. Videotex (microcomputer and television screen) with keyboard or touch screen
11. Electronic mail
12. Facsimile machine (fax)
13. Television (teleshopping).

SECOND SCHEDULE

(Regulation 3)

Financial Services

- Investment services, including services of collective investment schemes;
- Insurance and re-insurance operations;
- Banking services;
- Operations relating to dealings in futures or options;

Such services include in particular: the services and activities regulated by the following laws:

- The Investment Services Act - Cap. 370
 - The Banking Act - Cap. 371
 - The Financial Institutions Act - Cap. 376
 - The Insurance Business Act - Cap. 403
 - The Insurance Brokers and Other Intermediaries Act - Cap. 404.
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