



# MCCAA

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## OFFICE FOR CONSUMER AFFAIRS

GUIDE

# GUIDANCE NOTES ON ALTERNATIVE DISPUTE RESOLUTION (RESIDUAL ADR ENTITY)

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### Complaints and Conciliation Directorate

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**OFFICE FOR CONSUMER AFFAIRS**

## GUIDANCE NOTES ON ALTERNATIVE DISPUTE RESOLUTION (RESIDUAL ADR ENTITY)

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### GUIDANCE NOTES ON ALTERNATIVE DISPUTE RESOLUTION (RESIDUAL ADR ENTITY)

#### 1. Introduction and Scope

- 1.1. As per the provisions of the Third Schedule of the Consumer Affairs Act (Chapter 378), the Complaints and Conciliation Directorate (CCD) has been given the function of a residual Alternative Dispute Resolution (ADR) entity. This means that the CCD is responsible to carry out alternative dispute resolution in cases where there are no sector specific ADR entities. This to ensure that consumers have full ADR coverage and easy access to out of court redress mechanisms for consumer disputes.
- 1.2. As an ADR entity the CCD addresses both domestic and cross-border disputes concerning contractual obligations resulting from sales contracts or service contracts between a trader established in the European Union and a consumer resident in the EU. The Directorate intervenes to bring the parties together with the aim of facilitating or proposing a solution.
- 1.3. For a case to be submitted to the ADR procedure, both the consumer and the trader need to voluntarily agree to settle their dispute through the ADR process. Additionally, the parties may opt to withdraw from the ADR procedure at any stage and for any reason.
- 1.4. The ultimate objective of the ADR procedure is to reach to a settlement through a private agreement between the parties.
- 1.5. Disputes which cannot be addressed through the ADR process are:
  - (a) disputes between traders,
  - (b) direct negotiation between the consumer and the trader,
  - (c) procedures initiated by a trader against a consumer,
  - (d) health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices
  - (e) non-economic services of general interest; and
  - (f) the public provision for further or higher education.
- 1.6. The CCD can refuse to deal with a dispute when:
  - (a) the consumer does not first attempt to contact the trader to resolve the matter directly,
  - (b) the dispute is frivolous and vexatious,

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- (c) the dispute was already considered by another ADR entity or competent court or tribunal,
- (d) the consumer did not submit the complaint to the CCD within 2 years from submission of the complaint to the trader, or
- (e) dealing with such a dispute would otherwise seriously impair the effective operation of the CCD.

## **2. Disclaimer**

- 2.1. This document has no legal value. All the contents of this document are being given gratuitously and without prejudice. They are purely of informational and advisory character and the Authority shall not accept any liability or claim for damages arising out of such contents.
- 2.2. Only the text of the Regulations is authentic in law. Should there be differences between the contents of this guide and the text of the Regulations, the latter shall prevail.
- 2.3. For further information, please contact the Complaints and Conciliation Directorate

## **3. ADR Process**

### **3.1. Starting the ADR Process**

- 3.1.1. The process commences when the dispute is referred by the parties to the CCD for out of court settlement through the ADR process.
- 3.1.2. The dispute may be referred to the CCD either by registering the case online by the consumer or his representative or by writing a letter addressed to the Director, Complaints and Conciliation Directorate, Malta Competition and Consumer Affairs Authority at Mizzi House, National Road, Blata l-Bajda, HMR 9010.

### **3.2. ADR Registration Process**

- 3.2.1. Once the consumer or his representative registers the claim, the economic operator is notified and is asked to confirm participation in the ADR process within 10 working days. Following this confirmation, and successful registration of all participants, an ADR officer is appointed by the CCD to start the ADR.

### **3.3. Analysis of the Dispute by the ADR Officer**

- 3.3.1 The ADR Officer will analyse the complaint and ensures that:

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- (a) the dispute falls within the remit of the CCD's residual ADR procedure; the dispute falls within the remit of the CCD's residual ADR procedure;
- (b) all the required and necessary information has been supplied by the parties; and
- (c) there are no circumstances that may be seen to affect the independence and impartiality of the ADR Officer.

3.3.2 At this stage the ADR Officer may require the parties to submit further information. In this case the Officer informs the parties and will give a deadline within which this information is to be submitted. On the other hand, if there are grounds for refusing to consider the dispute, the ADR officer must within 3 weeks from when receiving the complaint, provide a reasoned explanation on the grounds for refusing to consider the dispute.

### 3.4. Conducting the Process

3.4.1. Once the ADR Officer has completed with evaluating the case and all the relevant documentation is received, a date for the first ADR session will be communicated to the parties. During the process, the parties will be allowed sufficient time to put forward their submissions including any additional documents or expert opinions if these are required.

3.4.2. The conclusions and actions following each ADR session will be recorded by the ADR Officer. The parties will be notified in writing about the next session if required, allowing sufficient time for the parties to bring further arguments, documents or expert opinions relevant to the claim.

### 3.5. Concluding the Procedure

3.5.1 Once the parties inform the ADR Officer that they do not have further submissions to make, the ADR Officer will proceed to formulate the solution to the dispute by compiling a report containing:

- (a) A summary of the events which gave rise to the dispute;
- (b) A copy of the documents received which include the relevant information relating to the dispute;
- (c) The minutes of each ADR session;
- (d) The outcome in the form of a proposed solution to the dispute; and

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- (e) A statement on the grounds on which the outcome is based.
- 3.5.2 The ADR Officer has 90 days within which to conclude this process, which period can be extended by the ADR Officer upon informing the parties to the dispute with the expected length of time needed for the conclusion of the dispute.
- 3.5.3 The ADR report is then submitted to the parties, giving them a period of not less than 3 days to forward their written consent to the proposed solution. The dispute is concluded once the parties inform the ADR Officer on whether or not they agree to the proposed solution.
- 3.5.4 The ADR procedure is free of charge and can be conducted in either English or Maltese. At any point during the ADR process, the parties may opt to appoint a representative. The physical presence of the parties, or their representatives, during the ADR sessions is usually required.

## **4. Contact Details**

### **Complaints and Conciliation Directorate Office of Consumer Affairs**

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