

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3556 of 28th September, 2006

B. 27/06

BILL
FOR

AN ORDINANCE to transpose into the law of Gibraltar Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Ordinance may be cited as the Financial Services (Distance Marketing) Ordinance 2006 and comes into operation on the day appointed by the Minister with responsibility for financial services by notice in the Gazette.

Interpretation.

2.(1) In this Ordinance—

“the Authority” means such person or body as the Minister may, by notice in the Gazette, appoint;

“breach” means a contravention by a supplier or an intermediary of a prohibition in, or a failure by him to comply with a requirement of, this Ordinance;

“business” includes a trade or profession;

“consumer” means any individual who, in contracts to which this Ordinance applies, is acting for purposes which are outside any business he may carry on;

“credit” includes a cash loan and any other form of financial accommodation, and for this purpose “cash” includes money in any form;

“the Directive” means Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC;

“distance contract” means any contract concerning one or more financial services concluded between a supplier or an intermediary and a consumer under an organised distance sales or service-provision scheme run by the supplier or by an intermediary, who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;

“durable medium” means any instrument which enables a consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

“EEA supplier” means a supplier who is a national of an EEA State, or a company or firm (within the meaning of Article 48 of the Treaty establishing the European Community) formed in accordance with the law of an EEA State;

“EEA State” means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993;

“financial service” means any service of a banking, credit, insurance, personal pension, investment or payment nature;

“licensee” means a person licensed to carry-on—

- (a) deposit-taking business under the Banking Ordinance; or
- (b) insurance business under the Insurance Companies Ordinance; or

- (c) investment business or controlled activity under the Financial Services Ordinance;

and “licensed business” and “licensed activity” shall be construed accordingly;

“means of distance communication” means any means which, without the simultaneous physical presence of the supplier or intermediary and the consumer, may be used for the marketing of a service between those parties;

“Minister” means the Minister with responsibility for financial services;

“relevant date” means the date on which this Ordinance comes into operation

“supplier” means any person who, acting in his commercial or professional capacity, is the contractual provider of services.

(2) In this Ordinance, subject to sub-section (1), any expression used in this Ordinance which is also used in the Directive has the same meaning as in the Directive.

Circumstances when sections 7 to 15 apply.

3.(1) Sections 7 to 14 shall apply, subject to sections 4 and 5, in relation to distance contracts made on or after the relevant date.

(2) Section 15 shall apply in relation to financial services supplied on or after the relevant date under an organised distance sales or service-provision scheme run by the supplier or by an intermediary, who, for the purpose of that supply, makes exclusive use of one or more means of distance communication up to and including the time at which the financial services are supplied.

Circumstances when sections 7 to 15 do not apply.

4.(1) Where an EEA State has transposed the Directive or has obligations in its domestic law corresponding to those provided for in the Directive—

- (a) sections 7 to 14 shall not apply in relation to any contract made between an EEA supplier contracting from an

establishment in that EEA State and a consumer in Gibraltar;
and

- (b) section 15 shall not apply to any supply of financial services by an EEA supplier from an establishment in that EEA State to a consumer in Gibraltar;

if the provisions by which that State has transposed the Directive, or the obligations in the domestic law of that State corresponding to those provided for in the Directive, as the case may be, apply to that contract or that supply.

(2) Subject to sub-section (5) and section 6(2) and (3)–

- (a) sections 7 to 11 shall not apply in relation to any contract made by a supplier who is a licensee, the making or performance of which constitutes or is part of a licensed business or activity carried on by him;
- (b) section 15 shall not apply to any supply of financial services by a supplier who is a licensee, where that supply constitutes or is part of a licensed business or activity carried on by him.

(3) Sub-section (2) shall not apply in relation to any contract or supply of financial services made by a supplier who is the operator, trustee or custodian of a scheme which is a recognised scheme by virtue of section 24 of the Financial Services Ordinance 1989, where the making or performance of the contract or the supply of the financial services constitutes or is part of a licensed business or activity carried on by him.

(4) In sub-section (3) “operator”, “trustee” and “custodian” each has the same meaning as in section 2 of the Financial Services Ordinance 1989.

Initial Service Agreements.

5.(1) Where a consumer and a supplier enter an initial service agreement and–

- (a) successive operations of the same nature; or
- (b) a series of separate operations of the same nature;

are subsequently performed between them over time and within the framework of that agreement, then, if any of sections 7 to 14 apply, they shall apply only to the initial service agreement.

(2) Where a consumer and a supplier do not enter an initial service agreement and—

- (a) successive operations of the same nature; or
- (b) a series of separate operations of the same nature;

are performed between them over time, then, if sections 7 and 8 apply, they shall apply only—

- (i) when the first operation is performed; and
- (ii) to any operation which is performed more than one year after the previous operation.

(3) For the purposes of this section, “initial service agreement” shall include, for example, an agreement for the provision of—

- (a) a bank account;
- (b) a credit card; or
- (c) portfolio management services.

(4) For the purposes of this section, “operations” includes, for example—

- (a) deposits to or withdrawals from a bank account;
- (b) payments by a credit card;
- (c) transactions carried out within the framework of an initial service agreement for portfolio management services; and
- (d) subscriptions to new units or shares of the same collective investment scheme;

but shall not include adding new elements to an existing initial service agreement, for example adding the possibility of using an electronic payment instrument together with an existing bank account.

Financial services marketed by an intermediary.

6.(1) This section shall apply where a financial service is marketed by an intermediary.

(2) Notwithstanding section 4(2), sections 7 and 8 shall apply in relation to the intermediary unless the intermediary is a licensee and the marketing of the financial service constitutes or is part of a licensed business or activity carried on by him.

(3) Notwithstanding sub-sections (2) to (4) of section 4, section 15 shall apply to the intermediary unless the intermediary is a licensee and is acting in the course of a licensed business or activity carried on by him.

Information required prior to the conclusion of the contract.

7.(1) Subject to sub-section (4), in good time prior to the consumer being bound by any distance contract, the supplier or the intermediary shall provide to the consumer the information specified in Schedule 1.

(2) The information specified in Schedule 1 shall be provided in a clear and comprehensible manner appropriate to the means of distance communication used, with due regard in particular to the principles of good faith in commercial transactions and the principles governing the protection of those who are unable to give their consent such as minors.

(3) Subject to sub-section (4), the supplier or the intermediary shall make clear his commercial purpose when providing the information specified in Schedule 1.

(4) In the case of a voice telephone communication—

- (a) the supplier or the intermediary shall make clear his identity and the commercial purpose of any call initiated by him at the beginning of any conversation with the consumer; and
- (b) if the consumer explicitly consents, only the information specified in Schedule 2 need be given.

(5) The supplier or the intermediary shall ensure that the information he provides to the consumer pursuant to this section, regarding the contractual obligations which would arise if the distance contract were concluded,

accurately reflects the contractual obligations which would arise under the law presumed to be applicable to that contract.

Written and additional information.

8.(1) The supplier or the intermediary under a distance contract shall communicate to the consumer on paper, or in another durable medium which is available and accessible to the consumer, all the contractual terms and conditions and the information specified in Schedule 1, either–

- (a) in good time prior to the consumer being bound by that distance contract; or
- (b) immediately after the conclusion of the contract, where the contract has been concluded at the consumer's request using a means of distance communication which does not enable provision in accordance with paragraph (a) of the contractual terms and conditions and the information specified in Schedule 1.

(2) The supplier or the intermediary shall communicate the contractual terms and conditions to the consumer on paper, if the consumer so requests at any time during their contractual relationship.

(3) Sub-section (2) shall not apply if the supplier or the intermediary has already communicated the contractual terms and conditions to the consumer on paper during that contractual relationship, and those terms and conditions have not changed since they were so communicated.

(4) The supplier or the intermediary shall change the means of distance communication with the consumer if the consumer so requests at any time during his contractual relationship with the supplier, unless that is incompatible with the distance contract or the nature of the financial service provided to the consumer.

Right to cancel.

9.(1) Subject to section 11, if within the cancellation period set out in section 10, notice of cancellation is properly given by the consumer to the supplier, the notice of cancellation shall operate to cancel the distance contract.

(2) Cancelling the contract shall have the effect of terminating the contract at the time at which the notice of cancellation is given.

(3) For the purposes of this Ordinance, a notice of cancellation is a notification given—

- (a) orally (where the supplier has informed the consumer that notice of cancellation may be given orally);
- (b) in writing;
- (c) in another durable medium available and accessible to the supplier;

which, however expressed, indicates the intention of the consumer to cancel the contract by that notification.

(4) Notice of cancellation given under this section by a consumer to a supplier shall be treated as having been properly given if the consumer—

- (a) gives it orally to the supplier (where the supplier has informed the consumer that notice of cancellation may be given orally);
- (b) leaves it at or sends it by post to the address of the supplier last known to the consumer and addressed to the supplier by name (in which case it shall be taken to have been given on the day on which it was so left or so posted);
- (c) sends it by facsimile to the business facsimile number of the supplier last known to the consumer (in which case it shall be taken to have been given on the day on which it was sent);
- (d) sends it by electronic mail to the business electronic mail address of the supplier last known to the consumer (in which

case it shall be taken to have been given on the day on which it is sent); or

- (e) by other electronic means—
 - (i) sends it to an internet address or web-site which the supplier has notified the consumer may be used for the purpose, or
 - (ii) indicates it on such a web-site in accordance with instructions which are on the web-site or which the supplier has provided to the consumer,

(in which case it shall be taken to have been given on the day on which it is sent to that address or web-site or indicated on that web-site).

(5) The references in sub-section (4)(b) to the address of the supplier shall, in the case of a supplier which is a body corporate, be treated as including a reference to the address of the secretary or clerk of that body.

(6) The references in sub-section (4)(b) to the address of the supplier shall, in the case of a supplier which is a partnership, be treated as including a reference to the address of a partner or a person having control or management of the partnership business.

(7) In this section—

- (a) every reference to the supplier shall include a reference to any other person previously notified by or on behalf of the supplier to the consumer as a person to whom notice of cancellation may be given;
- (b) the references to giving notice of cancellation orally shall include giving such notice by voice telephone communication, where the supplier has informed the consumer that notice of cancellation may be given in that way; and
- (c) “electronic mail” means any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient’s terminal equipment until it is collected by the recipient and includes messages sent using a short message service.

Cancellation period.

10.(1) For the purposes of section 9, the cancellation period shall begin on the day on which the distance contract is concluded (“conclusion day”) and shall end as provided for in sub-sections (2) to (5).

(2) Where the supplier or the intermediary has complied with section 8(1) on or before conclusion day, the cancellation period shall end on the expiry of fourteen calendar days beginning with the day after conclusion day.

(3) Where the supplier or the intermediary has not complied with section 8(1) on or before conclusion day, but subsequently communicates to the consumer on paper, or in another durable medium which is available and accessible to the consumer, all the contractual terms and conditions and the information required under section 8(1), the cancellation period shall end on the expiry of fourteen calendar days beginning with the day after the day on which the consumer receives the last of those terms and conditions and that information.

(4) In the case of a distance contract relating to life insurance, for the references to conclusion day in sub-sections (2) and (3) there shall be substituted references to the day on which the consumer is informed that the distance contract has been concluded.

(5) In the case of a distance contract relating to life insurance or a personal pension, for the references to fourteen calendar days in sub-sections (2) and (3) there shall be substituted references to thirty calendar days.

Exceptions to the right to cancel.

11.(1) Subject to sub-sections (2) to (4), section 9 shall not confer on a consumer a right to cancel a distance contract which is–

- (a) a contract for a financial service where the price of that service depends on fluctuations in the financial market outside the supplier’s control, which may occur during the cancellation period, such as services related to–
 - (i) foreign exchange;
 - (ii) money market instruments;

- (iii) transferable securities;
- (iv) units or shares in collective investment schemes;
- (v) financial-futures contracts, including equivalent cash-settled instruments;
- (vi) forward interest-rate agreements;
- (vii) interest-rate, currency and equity swaps;
- (viii) options to acquire or dispose of any instruments referred to in sub-paragraphs (i) to (vii), including cash-settled instruments and options on currency and on interest rates;

- (b) a contract which covers travel and baggage or similar short-term insurance policies and which has a total duration of less than one month;
- (c) a contract whose performance has been fully completed by both parties at the consumer's express request before the consumer gives notice of cancellation;
- (d) a contract under which a supplier provides credit to a consumer and the consumer's obligation to repay is secured by a legal mortgage on land;
- (e) a contract under which the supplier provides credit to a consumer for the purchase of a right to use properties on a timeshare basis;
- (f) a contract under which a supplier provides credit to a consumer for the purchase of land or an existing building, or an agreement for a bridging loan in connection with the purchase of land or an existing building.

(2) Sub-section (1) shall not apply to a distance contract if the supplier (and not the intermediary) has not complied with section 8(1), unless—

- (a) the circumstances fall within section 8(1)(b); and

- (b) the supplier (and not the intermediary) has complied with section 7(1) and (2) or, if applicable, section 7(4)(b), and with section 7(5).

(3) Sub-section (1) shall not apply to a distance contract if the intermediary has not complied with section 8(1) and the supplier has not done what the intermediary was required to do by that section, unless—

- (a) the circumstances fall within section 8(1)(b); and
- (b) either—
 - (i) the intermediary has complied with section 7(1) and (2) or, if applicable, section 7(4)(b), and with section 7(5); or
 - (ii) the supplier has done what the intermediary was required to do by section 7(1) and (2) or, if applicable, section 7(4)(b), and by section 7(5).

(4) Where—

- (a) the conditions in sub-section (2)(a) and (b) or sub-section (3)(a) and (b) are satisfied in relation to a distance contract falling within sub-section (1);
- (b) the supplier or the intermediary has not complied with section 8(1); and
- (c) the consumer has not, by the end of the sixth day after the day on which the distance contract is concluded, received all the contractual terms and conditions and the information required under section 8(1);

the consumer may cancel the contract under section 9 during the period beginning on the seventh day after the day on which the distance contract is concluded and ending when he receives the last of the contractual terms and conditions and the information required under section 8(1).

Automatic cancellation of an attached contract.

12.(1) For the purposes of this section, where there is a distance contract for the provision of a financial service by a supplier to a consumer (“the main contract”) and there is a further distance contract (“the secondary contract”) for the provision to that consumer of a further financial service by–

- (a) the same supplier; or
- (b) a third party, the further financial service being provided pursuant to an agreement between the third party and the supplier under the main contract;

then the secondary contract (referred to in this Ordinance as an “attached contract”) is attached to the main contract if any of the conditions in sub-section (2) shall be satisfied.

(2) The conditions referred to in sub-section (1) are–

- (a) the secondary contract is entered into in compliance with a term of the main contract;
- (b) the main contract is, or is to be, financed by the secondary contract;
- (c) the secondary contract is entered into by the consumer to induce the supplier to enter into the main contract;
- (d) performance of the secondary contract requires performance of the main contract.

(3) Where a main contract is cancelled by a notice of cancellation given under section 9–

- (a) the cancellation of the main contract shall also operate to cancel, at the time at which the main contract is cancelled, any attached contract which is not a contract or agreement of a type listed in section 11(1); and
- (b) the supplier under the main contract shall, if he is not the supplier under the attached contract, forthwith on receipt of the

notice of cancellation inform the supplier under the attached contract.

(4) Sub-section (3)(a) shall not apply to an attached contract if, at or before the time at which the notice of cancellation in respect of the main contract is given, the consumer has given and not withdrawn a notice to the supplier under the main contract that cancellation of the main contract shall not to operate to cancel that attached contract.

Payment for services provided before cancellation.

13.(1) This section applies where a cancellation event occurs in relation to a distance contract.

(2) In this section, “cancellation event” means the cancellation of a distance contract under section 9 or 12.

(3) The supplier shall refund any sum paid by or on behalf of the consumer under or in relation to the contract to the person by whom it was paid, less any charge made in accordance with sub-section (6), as soon as possible and in any event within a period not exceeding 30 calendar days beginning with—

- (a) the day on which the cancellation event occurred; or
- (b) if the supplier proves that this is later—
 - (i) in the case of a contract cancelled under section 9, the day on which the supplier in fact received the notice of cancellation; or
 - (ii) in the case of an attached contract under which the supplier is not the supplier under the main contract, the day on which, pursuant to section 12(3)(b), he was in fact informed by the supplier under the main contract of the cancellation of the main contract.

(4) The reference in sub-section (3) to any sum paid on behalf of the consumer shall include any sum paid by any other person (“the creditor”), who is not the supplier, under an agreement between the consumer and the creditor by which the creditor provides the consumer with credit of any amount.

(5) Where any security has been provided in relation to the contract, the security (so far as it has been provided) shall, on cancellation under section 9 or 12, be treated as never having had effect; and any property lodged solely for the purposes of the security as so provided shall be returned forthwith by the person with whom it is lodged.

(6) Subject to sub-sections (7), (8) and (9), the supplier may make a charge for any service actually provided by the supplier in accordance with the contract.

(7) The charge shall not exceed an amount which is in proportion to the extent of the service provided to the consumer prior to the time at which the cancellation event occurred (including the service of arranging to provide the financial service) in comparison with the full coverage of the contract, and in any event shall not be such that it could be construed as a penalty.

(8) The supplier shall not make any charge unless he can prove on the balance of probabilities that the consumer was informed about the amount payable in accordance with—

- (a) section 7(1) and paragraph 3(a) of Schedule 1;
- (b) section 7(4) and paragraph 5 of Schedule 2; or
- (c) rules corresponding to those provisions;

as the case may be.

(9) The supplier shall not make any charge if, without the consumer's prior request, he commenced performance of the contract prior to the expiry of the relevant cancellation period.

(10) In sub-section (9), the relevant cancellation period shall be the cancellation period which—

- (a) in the case of a main contract, is applicable to that contract; or
- (b) in the case of an attached contract, would be applicable to that contract if that contract were a main contract;

under section 10.

(11) The consumer shall, as soon as possible and in any event within a period not exceeding 30 calendar days beginning with the day on which the cancellation event occurred—

- (a) refund any sum paid by or on behalf of the supplier under or in relation to that contract to the person by whom it was paid; and
- (b) either restore to the supplier any property of which he has acquired possession under that contract, or deliver or send that property to any person to whom, under section 9, a notice of cancellation could have been given in respect of that contract.

(12) Breach of a duty imposed by sub-section (11) on a consumer is actionable as a breach of statutory duty.

Payment by card.

14.(1) Subject to sub-section (2), where—

- (a) a payment card has been issued to an individual who, when entering the contract for the provision of that card, was acting for purposes which were outside any business he may carry on (“the card-holder”); and
- (b) fraudulent use is made of that card to make a payment under or in connection with a distance contract to which this Ordinance applies, by another person who is neither acting, nor to be treated as acting, as the card-holder’s agent;

the card-holder may request cancellation of that payment, and shall be entitled to be recredited with the sum paid, or to have it returned, by the card issuer.

(2) Where sub-section (1) applies and, in any proceedings, the card-holder alleges that any use made of the payment card was not authorised by him, it is for the card issuer to prove that the use was so authorised.

(3) For the purposes of this section—

“card issuer” means the owner of the card;

“payment card” includes a credit card, a charge card, a debit card and a store card.

Unsolicited services or communications.

15.(1) A person (“the recipient”) who receives unsolicited financial services for purposes other than those of his business from another person who supplies those services in the course of his business, shall not thereby become subject to any obligation to make payment or otherwise.

(2) Where, in the course of any business—

- (a) unsolicited financial services are supplied for purposes other than those of the recipient’s business; and
- (b) a person includes with the supply of those services a demand for payment, or an assertion of a present or prospective right to payment in respect of those service;

that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(3) A person who, not having reasonable cause to believe that there is a right to payment, in the course of any business and with a view to obtaining payment for what he knows are unsolicited financial services supplied as mentioned in sub-section (2)—

- (a) threatens to bring any legal proceedings;
- (b) places or causes to be placed the name of any person 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 and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(4) In this section, “unsolicited” means, in relation to financial services supplied to any person, that they are supplied without any prior request made by or on behalf of that person.

(5) For the purposes of this section, a person who sends to a recipient an invoice or similar document which states the amount of a payment is to be regarded as asserting a right to payment.

(6) This section is without prejudice to any right a supplier may have at any time, by contract or otherwise, to renew a distance contract with a consumer without any request made by or on behalf of that consumer prior to the renewal of that contract.

(7) A supplier or intermediary shall not make any unsolicited distance communication using any voice telephony system, an automatic calling machine or a facsimile machine, without the consumer's prior consent, and the consumer shall not thereby become subject to any obligation to make payment for the use of such means of distance communication.

Prevention of contracting-out.

16.(1) A term contained in any contract shall be void if, and to the extent that, it is inconsistent with the application of a provision of this Ordinance to a distance contract or the application of section 15 to a supply of unsolicited financial services.

(2) Where a provision of this Ordinance specifies a duty or liability of the consumer in certain circumstances, a term contained in a contract shall be inconsistent with that provision if it purports to impose, directly or indirectly, an additional or greater duty or liability on him in those circumstances.

(3) This Ordinance shall apply notwithstanding any contract term which applies or purports to apply the law of a State which is not an EEA State if the contract or supply has a close connection with the territory of an EEA State.

Consideration of complaints.

17. The Authority shall consider any complaint made to it about a breach unless the complaint appears to the Authority to be frivolous or vexatious.

Injunctions to secure compliance with this Ordinance.

18.(1) The Authority may apply for an injunction (including an interim injunction) against any person who appears to it to be responsible for a breach.

(2) On an application made under this section, the court may grant an injunction on such terms as it thinks fit to secure compliance with this Ordinance.

(3) In deciding whether or not to apply for an injunction in respect of a breach, the Authority may, if it considers it appropriate to do so, have regard to any undertaking as to compliance with this Ordinance given to it by or on behalf of any person.

Offences.

19.(1) A supplier or an intermediary under a distance contract who fails to comply with section 7(3) or (4)(a) or section 8(2) or (4) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(2) If an offence under sub-section (1), or under section 15(2) or (3), committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity; or
- (b) to be attributable to any neglect on his part;

he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(3) If the affairs of a body corporate are managed by its members, sub-section (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(4) If an offence under sub-section (1), or under section 15(2) or (3), committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of any partner, or any person who was purporting to act as a partner; or
- (b) to be attributable to any neglect on his part;

he as well as the partnership shall be guilty of an offence and liable to be proceeded against and punished accordingly.

(5) If an offence under sub-section (1), or under section 15(2) or (3), committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or any person who was purporting to act in any such capacity; or
- (b) to be attributable to any neglect on his part;

he as well as the association shall be guilty of an offence and liable to be proceeded against and punished accordingly.

Regulations.

20. The Minister may make regulations prescribing all matters which by this Ordinance may be required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Ordinance.

SCHEDULE 1

**INFORMATION REQUIRED PRIOR TO THE CONCLUSION OF
THE CONTRACT**

Sections 7(1) and 8(1)

1. About the Supplier.

(a) The identity and the main business of the supplier, the geographical address at which the supplier is established and any other geographical address relevant to the consumer's relations with the supplier.

(b) Where the supplier and the intermediary has a representative established in the consumer's country or territory of residence, the identity of that representative and the geographical address relevant to the consumer's relations with him.

(c) Where the consumer's dealings are with any professional other than the supplier, the identity of that professional, the capacity in which he is acting with respect to the consumer, and the geographical address relevant to the consumer's relations with that professional.

(d) Where the supplier and the intermediary are registered in a trade or similar public register, the particulars of the register in which they are entered and their registration number or an equivalent means of identification in that register.

(e) Where the supplier's and the intermediary's activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority.

2. About the Financial Service.

(a) A description of the main characteristics of the financial service.

(b) The total price to be paid by the consumer to the supplier for the financial service, including all related fees, charges and expenses, and all taxes paid via the supplier or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it.

(c) Where relevant, notice indicating that: (i) the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the

financial markets outside the supplier's control; and (ii) historical performances are no indicators for future performances.

(d) Notice of the possibility that other taxes or costs may exist that are not paid via the supplier or imposed by him.

(e) Any limitations of the period for which the information provided is valid.

(f) The arrangements for payment and for performance.

(g) Any specific additional cost for the consumer of using the means of distance communication, if such additional cost is charged.

3. About the Distance Contract.

(a) Whether or not there is a right of cancellation and, where there is a right of cancellation, its duration and the conditions for exercising it, including information on the amount which the consumer may be required to pay in accordance with section 13, as well as the consequences of not exercising that right.

(b) The minimum duration of the distance contract in the case of financial services to be performed indefinitely or recurrently.

(c) Information on any rights the parties may have to terminate the distance contract early or unilaterally by virtue of the terms of the contract, including any penalties imposed by the contract in such cases.

(d) Practical instructions for exercising the right to cancel in accordance with section 9 indicating, among other things, the address at which the notice of cancellation should be left or to which it should be sent by post, and any facsimile number or electronic mail address to which it should be sent.

(e) The EEA State or States whose laws are taken by the supplier as a basis for the establishment of relations with the consumer prior to the conclusion of the distance contract.

(f) Any contractual clause on the law applicable to the distance contract or on the competent court.

(g) In which language, or languages: (i) the contractual terms and conditions, and the prior information specified in this Schedule, are supplied;

and (ii) the supplier and the intermediary, with the agreement of the consumer, undertakes to communicate during the duration of the distance contract.

4 About Redress.

(a) Whether or not there is an out-of-court complaint and redress mechanism for the consumer and, if so, the methods for having access to it.

(b) The existence of guarantee funds or other compensation arrangements, except to the extent that they are required by Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit guarantee schemes or Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor compensation schemes.

SCHEDULE 2

**INFORMATION REQUIRED IN THE CASE OF VOICE
TELEPHONE COMMUNICATIONS**

Section 7(4)(b)

1. The identity of the person in contact with the consumer and his link with the supplier.
2. A description of the main characteristics of the financial service.
3. The total price to be paid by the consumer to the supplier for the financial service including all taxes paid via the supplier or, if an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it.
4. Notice of the possibility that other taxes or costs may exist that are not paid via the supplier or imposed by him.
5. Whether or not there is a right to cancel and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the consumer may be required to pay in accordance with section 13, as well as the consequences of not exercising that right.
6. That other information is available on request and the nature of that information.

EXPLANATORY MEMORANDUM

This Bill gives effect to Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (“the Directive”).

Clauses 3 to 5 identify the transactions to which the substantive provisions of the Ordinance will apply. Clause 3 defines these as “distance contracts”, as defined in clause 2(1) (or, for the purposes of clause 15, comparable supplies of financial services) made on or after the date on which the Ordinance will come into operation. Clause 4 then disapplies certain provisions from various categories of contract and supply where equivalent provision is made by other regimes: sub-clause (1) excludes contracts and supplies made by suppliers established in a State within the European Economic Area where the law of that State regulates the contract or supply in accordance with the Directive. Clause 5 gives effect to Article 1(2) of the Directive in the light of Recital (17) in the Directive’s preamble, under which the substantive provisions of the Directive only apply to an “initial service agreement” with a financial services supplier or the first in a series of similar operations, and not to every subsequent transaction carried out under that agreement or in that series.

Clause 6 sets out how the Ordinance will apply in cases where financial services are marketed through an intermediary, as contemplated by Recital (19) in the preamble to the Directive. Some provisions of the Ordinance will apply to the intermediary instead of the supplier; others apply to either or both of them; others again still apply only to the supplier.

Clauses 7 and 8 and the Schedules contain the first set of main provisions, requiring suppliers of financial services, where the Ordinance will apply, to provide consumers with certain information listed in the Schedules. This information generally has to be provided before the consumer is bound by a distance contract for supply of the financial services in question.

Clauses 9 to 13 contain the next set of main provisions, giving consumers a right to cancel most distance contracts for financial services during a set period after commencement of the contract.

Clause 9 contains the right to cancel, specifying the means by which the right can be exercised and defining the effect of cancellation as termination of the contract at the time at which the notice of cancellation is given. Clause

10 defines the period during which the cancellation right can be exercised: generally from the time the consumer is bound by the contract until 14 days after that, or until 14 days after the information required by section 8 is provided if later, but until 30 days after the later of those dates in the case of a contract for a personal pension and until 30 days after the day on which the consumer is informed that the distance contract has been concluded in the case of a contract for life insurance. Clause 11(1) lists certain types of contract to which, as permitted by the Directive, the cancellation right does not apply except in the circumstances dealt with in clause 11(2) to (4).

Clause 12 provides that, where a distance contract is cancelled under clause 9, certain other subsidiary distance contracts connected with that contract—defined in sub-clause (1) as “attached contracts”—are automatically cancelled too.

Clause 13 then provides for the consequences of cancellation of distance contracts, whether by notice under clause 9 or automatically under clause 12: the supplier must refund any sums received from the consumer under the contract, less a proportionate charge for any services already supplied, and must release and return to the consumer any security taken under the contract; the consumer must repay to the supplier any money paid to the consumer under the contract, and return any property acquired under it.

Clause 14 provides that, where a plastic card issued to a consumer is used fraudulently by someone else to make a payment in connection with a distance contract, the consumer is entitled to cancel the payment and to have all sums paid recredited or returned by the card issuer.

Clause 15 prevents consumers from being bound by any obligation in respect of financial services supplied to them but for which they have not asked; and makes it a criminal offence to demand or assert a right to payment with any such supply, or to take or threaten enforcement action with a view to obtaining payment for such a supply, without reason to believe payment is legally due. The clause also prohibits unsolicited communications using certain means, without a consumer’s prior consent.

Clause 16 is designed to prevent the Ordinance being undermined. It renders void any contractual term which is inconsistent with any provision of the Ordinance or purports to impose on a consumer additional or greater duties or liabilities than those provided for in the Ordinance; and it overrides any contractual term which aims to apply the law of a non-EEA State so as to prevent a contract or supply closely connected with an EEA State from being governed by the provisions of the Directive.

Clauses 17 and 18 contain or provide for enforcement mechanisms in relation to the substantive provisions of the Ordinance.

Clause 19 provides that breaches of certain provisions of the Ordinance are criminal offences, provides for personal criminal liability on the part of certain officers or members of corporate and other bodies where they are responsible for the commission by such bodies of offences under the Ordinance.

Clause 20 provides a regulation-making power.

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