

Subsidiary Legislation made under s. 8 of the Consumer Protection (EU Cooperation) Act 2007 as read with section 23(g)(i) of the Interpretation and General Clauses Act and upon the Government by section 23(g)(ii) of the Interpretation and General Clauses Act.

**CONSUMER (ALTERNATIVE DISPUTE RESOLUTION)
REGULATIONS 2015**

(LN. 2015/107)

Commencement **9.7.2015**

Transposing:

Directive 2009/22/EC

Directive 2013/11/EU

Regulation (EC) No 2006/2004

Regulation (EU) No 524/2013

ARRANGEMENT OF REGULATIONS.

Regulation

1. Title.
2. Commencement.
3. Interpretation.
4. Where a trader is established.
5. Where an ADR entity is established.
6. Scope.
7. Relationship with other legislation.
8. Competent authority.
9. Information to Commission.
10. Residual ADR entity.
11. Application to become an ADR entity.
12. Listing of ADR entities.
13. Report.
14. Ongoing information obligations of an ADR entity.
15. Ongoing assessment of an ADR entity.
16. Removal of approval.
17. Training.
18. Liberty.

19. Consumer information by traders.
20. Assistance for consumers.
21. General Information.
22. Cooperation and exchanges of experience between ADR entities.
23. Cooperation between ADR entities and consumer protection authorities.
24. Penalties.
- 24A. Duty deemed to be discharged.
- 24B.
25. Amendment to the Limitation Act.

SCHEDULE 1

INFORMATION AN ADR APPLICANT SHALL SUPPLY

SCHEDULE 2

REQUIREMENTS AN ADR ENTITY SHALL MEET

SCHEDULE 3

INFORMATION TO BE INCLUDED IN THE LIST MAINTAINED BY A
COMPETENT AUTHORITY

SCHEDULE 4

ADR ENTITY'S ANNUAL ACTIVITY REPORT

In exercise of the powers conferred upon him by section 8 of the Consumer Protection (EU Cooperation) Act 2007 as read with section 23(g)(i) of the Interpretation and General Clauses Act and upon the Government by section 23(g)(ii) of the Interpretation and General Clauses Act and all other enabling powers, and in order to implement Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternate dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC and, in part, Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, the Minister and the Government have made the following Regulations—

Title.

1. These Regulations may be cited as the Consumer (Alternative Dispute Resolution) Regulations 2015.

Commencement.

2. These Regulations come into operation on 9 July 2015.

Interpretation.

3. In these Regulations—

“ADR” means alternate dispute resolution;

“ADR applicant” means a person who is applying under regulation 11 to become an ADR entity;

“ADR entity” means an entity, however named or referred to, which is established on a durable basis and offers the resolution of a dispute through an ADR procedure and that is listed in accordance with regulation 12;

“ADR official” means a natural persons in charge of ADR procedures;

“ADR procedure” means a procedure, as referred to in regulation 6, which complies with the requirements set out in these regulations and is carried out by an ADR entity;

“competent authority” means—

- (a) the competent authority for Gibraltar established under regulation 8; or
- (b) a public authority designated by a Member State for the purposes of the Directive and established at nation, regional or local level;

“consumer” means a natural person who is acting for purposes which are outside his trade, business, craft or profession;

“cross-border dispute” means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services and—

- (a) the consumer is resident in Gibraltar and the trader is established in a Member State; or
- (b) the consumer is resident in a Member State and the trader is established in Gibraltar;

“Directive” means Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternate dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, as the same may be amended from time to time;

“domestic dispute” means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident and the trader is established in Gibraltar;

“EU Regulation” means Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, as the same may be amended from time to time;

“habitual residence” means habitual residence as defined in Regulation (EC) No 593/2008, and “habitually resident” shall be construed accordingly;

“ODR” means online dispute resolution;

“Ombudsman for Public Services” means the Ombudsman appointed under section 3 of the Public Services Ombudsman Act 1998;

“sales contract” means a contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including a contract having as its object both goods and services;

“service contract” means a contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof; and

“trader” means a natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through a person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession.

Where a trader is established.

4.(1) Where a trader is a natural person he is established where he has his place of business.

(2) Where a trader is not a natural person it is established where it has its statutory seat, central administration or place of business, including a branch, agency or other establishment.

Where an ADR entity is established.

5.(1) Where an ADR entity is operated by a natural person it is established where it carries out ADR activities.

(2) Where an ADR entity is not a natural person it is established where it carries out ADR activities or has its statutory seat.

(3) Where an ADR entity is an authority or other public body it is established where it has its seat.

Scope.

6.(1) These Regulations shall apply to procedures for the out-of-court resolution of domestic and cross-border disputes.

(2) The disputes referred to in subregulation (1) are the contractual obligations stemming from sales contracts or service contracts between a trader, established in the European Union, and a consumer, resident in the European Union.

(3) The disputes referred to in subregulation (1) shall be resolved by an ADR entity established in the European Union and the ADR entity shall propose or impose a solution or bring the parties together with the aim of facilitating an amicable solution.

(4) These Regulations shall not apply to—

- (a) procedures before consumer complaint-handling systems operated by the trader;
- (b) non-economic services of general interest;
- (c) disputes between traders;
- (d) direct negotiation between the consumer and the trader;
- (e) attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute;
- (f) procedures initiated by a trader against a consumer;
- (g) 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;
- (h) public providers of further or higher education.

Relationship with other legislation.

7. These Regulations shall—

- (a) prevail, where there is a conflict between these Regulations and an enactment giving effect to an EU obligation relating to out-court redress procedures initiated by a consumer against a trader;
- (b) be without prejudice to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters to the extent that that Directive has been transposed into the law of Gibraltar by the following enactments—
 - (i) section 68A of the Equal Opportunities Act 2006;

Consumer Protection (EU Cooperation)
CONSUMER (ALTERNATIVE DISPUTE RESOLUTION)
REGULATIONS 2015

This version is out of date

2007-34

Subsidiary
2015/107

- (ii) section 33A of the Limitation Act;
- (iii) Part XIA of the Supreme Court Act; and
- (iv) section 83A of the Employment Act). [Art. 3(2)]

Competent authority.

8. The Ombudsman for Public Services shall be the competent authority within Gibraltar for the purposes of these Regulations and that competent authority shall be the single point of contact within Gibraltar for the purposes of the Directive.

Information to Commission.

9.(1) The competent authority shall ensure that the Commission is informed of all the ADR entities established in Gibraltar and shall ensure that the Commission is kept up-to-date in accordance with article 23 of the Directive.

(2) The Ombudsman for Public Services shall be the ODR contact within Gibraltar for the purposes of implementing the EU Regulation.

Residual ADR entity.

10.(1) The Ombudsman for Public Services and such officers as he may have appointed, under section 7 of the Public Services Ombudsman Act 1998, shall be the residual ADR entity within Gibraltar for the purposes of facilitating access by consumers to ADR procedure and to ensure that disputes referred to in regulation 6 and which involve a trader established in Gibraltar can be submitted to an ADR entity which complies with the requirements set out in these Regulations.

(2) The residual ADR entity appointed under subregulation (1) shall be competent to deal with disputes for the resolution of which no existing ADR entity is competent.

(3) A trader established in Gibraltar which is also established in 1 or more Member States and belongs to the same ADR entity may rely on an ADR entity in a Member State.

Application to become an ADR entity.

11.(1) An ADR applicant may apply to the competent authority to become an ADR entity.

- (2) The ADR applicant shall supply with an application–
- (a) the information Schedule 1; and
 - (b) such other information as the competent authority may require in order to assess whether the ADR applicant meets the requirements in Schedule 2.
- (3) The information referred to in subregulation (2) must be provided in such form as the competent authority may require.
- (4) Where an application is approved, the competent authority shall as soon as is reasonably practicable give written notice to the ADR applicant.
- (5) Where an application is rejected, the competent authority shall as soon as is reasonably practicable give written notice to the ADR applicant stating the grounds on which it has rejected the application.

Listing of ADR entities.

12.(1) The competent authority shall maintain a consolidated list of the ADR applicants which have been approved by it to become ADR entities, under regulation 11, and that list shall include the information in Schedule 3 in respect of each ADR entity.

(2) The competent authority, in its role as single point of contact within Gibraltar, shall without undue delay following the compilation of the list referred to in subregulation (1) ensure the list is sent to the Commission.

(3) If under regulation 14(2) the competent authority receives a notification from an ADR entity containing information which differs from the information included in relation to the ADR entity in the list maintained under subregulation (1), the competent authority shall, without undue delay–

- (a) amend the list to reflect the change in that information; and
- (b) ensure the updated list is sent to the Commission.

(4) The competent authority shall make the consolidated list of ADR entities published by the European Commission publically available–

- (a) on its website by providing a link to the relevant European Commission website; and

- (b) on a durable medium, when requested by a member of the public.

Report.

13.(1) The competent authority shall by 9 July 2018 and every four years thereafter publish and ensure the Commission is sent a report on the development and functioning of all ADR entities.

(2) The report referred to in subregulation (1) shall, in particular—

- (a) identify best practices of ADR entities;
- (b) where appropriate, point out the shortcomings, supported by statistics, that hinder the functioning of ADR entities for both domestic and cross-border disputes; and
- (c) where appropriate, make recommendations on how to improve the effective and efficient functioning of ADR entities.

(3) The competent authority may, for the purpose of enabling it to prepare the report referred to in subregulation (1), require an ADR entity for which it is competent to provide such information as it may require relating to the development and functioning of the ADR entity.

(4) The ADR entity shall, if requested by the competent authority under subregulation (3), provide the requested information in such form and within such period as may be required by the competent authority.

Ongoing information obligations of an ADR entity.

14.(1) An ADR entity shall comply with the requirements in the Schedules.

(2) Where the information supplied by an ADR entity under regulation 11 changes, the ADR entity shall, without undue delay, inform the competent authority in writing and provide the new information to the competent authority.

(3) An ADR entity shall compile and provide the competent authority with an annual activity report in accordance with Schedule 4.

(4) An ADR entity shall, within the expiry of a month after the second anniversary of having been approved as an ADR entity, and within the expiry of a month of every second anniversary thereafter, compile and

provide the competent authority with the information in accordance with Schedule 1, paragraph 2.

Ongoing assessment of an ADR entity.

15. Following the receipt of information from an ADR entity under regulation 14(2) the competent authority shall review the information received and assess whether the ADR entity continues to meet the requirements in regulations 17, 18 or Schedule 2.

Removal of approval.

16.(1) The competent authority shall provide notice in writing to an ADR entity approved by it under regulation 11 if the competent authority has reason to believe that the ADR entity no longer meets a requirement in Schedule 2.

(2) The notice referred to in subregulation (1) shall-

- (a) state the requirement the ADR entity fails to comply with; and
- (b) require the ADR entity to meet the requirement promptly or in any event within 3 months.

(3) If the ADR entity fails to meet the requirement notified to it on or before the expiry of the period specified in subregulation (2), the competent authority shall-

- (a) send notice in writing to the ADR entity of the withdrawal of the competent authority's approval of the ADR entity; and
- (b) remove the ADR entity from the list maintained by the competent authority under regulation 12.

(4) Where a competent authority removes an ADR entity under subregulation (3) it shall, without undue delay, ensure the updated list is sent to the Commission.

Training.

17.(1) The competent authority shall encourage ADR entities to provide training for a natural person providing ADR services.

(2) Where the ADR entity decides to provide training for a natural person providing ADR services, as referred to in subregulation (1), the competent

authority shall monitor the training schemes established by the ADR entities, on the basis of information communicated to it in accordance with Schedule 1, paragraph 2(g).

Liberty.

18.(1) An agreement between a consumer and a trader to submit complaints to an ADR entity shall not be binding on the consumer where the agreement was concluded before the dispute materialised and if the agreement has the effect of depriving the consumer of his right to bring an action before the courts for settlement of the dispute.

(2) In ADR procedures which impose a solution, the solution shall only be binding on the parties where—

- (a) the parties were informed that the solution was binding in advance of the ADR procedure; and
- (b) the parties specifically accepted this.

Consumer information by traders.

19.(1) Where a trader, established in Gibraltar, is obliged to use ADR services provided by an ADR entity—

- (a) pursuant to any statutory obligation or rule of law; or
- (b) under the rules of a trade association to which the trader belongs,

the trader must provide the name and website address of the ADR entity or entities—

- (c) on the trader's website, if the trader has a website; and
- (d) in the general terms and conditions of sales or service contracts between the trader and a consumer.

(2) The information referred to in subparagraph (1) shall be provided in a clear, comprehensible and easily accessible way.

(3) Where a trader has exhausted its internal complaint handling procedure when considering a complaint from a consumer relating to a sales contract or a service contract, the trader shall inform the consumer, on a durable medium—

- (a) that the trader cannot settle the complaint with the consumer;
- (b) of the name and website address of an ADR entity which would be competent to deal with the complaint, should the consumer wish to use ADR services; and
- (c) whether the trader is obliged, or prepared, to submit to an ADR procedure operated by that ADR entity.

(4) The trader information requirements set out in subregulations (1) and (3) apply in addition to information requirements applicable to traders regarding out-of-court redress procedures required under any other enactment.

Assistance for consumers.

20.(1) A consumer from a Member State may access an ADR entity which is competent to deal with the dispute in Gibraltar in order to begin ADR proceedings relating to a dispute arising from a cross-border sale contract or service contract.

(2) The residual ADR entity shall assist consumers in accessing the ADR services in Gibraltar or a Member State.

General Information.

21.(1) An ADR entity shall make publicly available on its website, by providing a link to the European Commission's website, and on a durable medium at its premises, the list of ADR entities referred to in article 20(4) of the Directive.

(2) The competent authority shall encourage relevant consumer organisations and business associations to make publicly available, on their websites and by other means they consider appropriate, the list of ADR entities referred to in article 20(4) of the Directive.

(3) The competent authority shall ensure appropriate dissemination of information on how a consumer may access ADR procedure for resolving disputes covered by these Regulations and by the Directive.

(4) The competent authority shall raise awareness of ADR entities and their procedures and promote ADR take-up by traders and consumers.

(5) The competent authority shall provide consumers with information about the relevant ADR entity when it receives a complaint from a consumer.

Cooperation and exchanges of experience between ADR entities.

22.(1) An ADR entity shall cooperate in the resolution of a cross-border dispute and conduct regular exchanges of best practices as regards the settlement of both cross-border and domestic disputes.

(2) The competent authority shall encourage ADR entities that facilitate the resolution of cross-border disputes and deal with disputes in a certain area to become members of sector-specific networks, where such networks exist.

Cooperation between ADR entities and consumer protection authorities.

23.(1) The competent authority shall ensure cooperation between ADR entities and national authorities entrusted with the enforcement of consumer protection.

(2) The cooperation referred to in subregulation (1) shall, in particular, include—

- (a) mutual exchange of information on practices in specific business sectors about which consumers have repeatedly lodged complaints; and
- (b) the provision of technical assessment and information by national authorities to ADR entities where the assessment or information is necessary for the handling of individual disputes and is already available.

(3) This regulation shall be without prejudice to provisions on professional and commercial secrecy which apply to the national authorities enforcing consumer protection.

(4) The ADR entities which receive information from the national authorities under this regulation shall comply with the provisions on professional and commercial secrecy referred to in subregulation (3).

(5) The Data Protection Act 2004 shall apply to this Regulation.

Penalties.

24.(1) The competent authority may issue a direction requiring a trader to comply with regulation 19.

(2) Where the trader fails to comply with the competent authority's direction within 2 weeks of receipt of such direction, the competent authority may impose a civil penalty.

(3) The amount of the civil penalty referred to in subsection (2) shall not exceed the equivalent of level 3 on the standard scale of fines.

(4) A penalty imposed under this regulation may be recovered as a civil debt by the competent authority.

(5) Any monies recovered by the competent authority from the payment of a civil penalty shall be paid into the consolidated fund.

Duty deemed to be discharged.

24A. Where, in accordance with the procedural rules referred to in paragraph 7 of Schedule 2, an ADR entity is unable to consider a complaint that has been submitted to it, there is no obligation to ensure that the consumer can submit his complaint to another ADR entity.

24B. Where an ADR entity dealing with disputes in a specific economic sector is competent to consider disputes relating to a trader operating in that sector but which is not a member of the organisation or association forming or funding the ADR entity, the obligations under article 5(1) of the Directive shall be deemed to have been complied with also with respect to disputes concerning that trader.

Amendment to the Limitation Act.

25. The Limitation Act is amended by inserting the following section after section 33A–

“Postponement of effect of expiry of limitation periods for ADR disputes.

33B.(1) In this section–

- (a) “ADR” has the meaning given to it in the Consumer Alternative Dispute Resolution Regulations 2015, as amended from time to time;

- (b) “ADR entity” has the meaning given to it in the Consumer Alternative Dispute Resolution Regulations 2015, as amended from time to time;
 - (c) “ADR official” has the meaning given to it in the Consumer Alternative Dispute Resolution Regulations 2015, as amended from time to time; and
 - (d) “ADR procedure” has the meaning given to it in the Consumer Alternative Dispute Resolution Regulations 2015, as amended from time to time.
- (2) Where, but for this section, the last day of a period of limitation prescribed by this Act that relates to the subject of the whole or part of a relevant dispute falls—
- (a) on or after a date when an ADR procedure in relation to the relevant dispute starts but before the date that the ADR procedure ends;
 - (b) on the date that an ADR in relation to the relevant dispute ends,
 - (c) in the 8 weeks after the date that an ADR procedure in relation to the relevant dispute ends
- the expiry of that period is postponed in accordance with subsection (3).
- (3) For the purposes of initiating any judicial proceedings or arbitration, the expiry of that period of limitation is postponed until the date falling 8 weeks after the date on which the ADR procedure ends.
- (4) For the purposes of this section, an ADR procedure starts on the date of the agreement to enter an ADR procedure that is entered into by the parties and the ADR entity.
- (5) For the purposes of this section, an ADR procedure ends on the earliest of the date that—
- (a) the parties reach an agreement in resolution of the relevant dispute;

- (b) a party notifies the other parties to the relevant dispute or the ADR entity that it has withdrawn from the ADR procedure of the relevant dispute;
 - (c) where there are 2 parties to the ADR procedure of the relevant dispute, is 14 days after a party has requested the other to confirm that is continuing with the ADR procedure of the relevant dispute, and has not receive a response from that party within 14 days of the request being made;
 - (d) where there are more than 2 parties to the ADR procedure of the relevant dispute, is 14 days after a party has requested another party to the relevant dispute (the second party) to confirm to the requesting party and all the other parties to the relevant dispute that it is continuing with the ADR procedure of the relevant dispute and the requesting, and other parties have no all received a response from the second party within 14 days of the request being made;
 - (e) is 14 days after the parties are notified that the ADR official's appointment has ended (whether by death, resignation or otherwise), if, within that 14 day period, the parties do not agree and appoint a replacement ADR official; or
 - (f) the ADR procedure of the relevant dispute otherwise comes to an end pursuant to the terms of the agreement to mediate the relevant dispute.
- (6) For the purpose of subsection (5)–
- (a) notification, requests and confirmation may be oral or written; and
 - (b) where the parties agree or party notifies other parties on different dates or are notified on different dates, the relevant date is the date that the last party agrees or notifies or is notified.
- (7) Where more than one period of limitation applies in relation to a relevant dispute, the expiry of one of those periods of limitation and the postponement of the effect of that expiry

under subsection (3) does not affect the running of the other limitation periods.

- (8) Where a period of limitation is extended by a fixed period by this Act, subsection (2) applies to the period of limitation so extended.
- (9) This section applies notwithstanding the other provisions of this Act.
- (10) This section is without prejudice to the provisions on limitation periods in international agreements applicable to Gibraltar and without prejudice to section 33A.”.

SCHEDULE 1

INFORMATION AN ADR APPLICANT SHALL SUPPLY

Regulations 11, 14(1), 14(4)

Upon application.

1. When applying to become an ADR entity, under regulation 11, an ADR applicant shall supply the following information to the competent authority–

- (a) name, contact details and website address;
- (b) information on the structure and funding of the ADR entity, including information on the natural persons in charge of dispute resolution, their remuneration, term of office and by whom they are employed;
- (c) the procedural rules of the ADR entity;
- (d) the fees charged, if applicable;
- (e) the average length of the dispute resolution procedures;
- (f) the language or languages in which complaints may be submitted and the dispute resolution procedure conducted;
- (g) a statement on the types of disputes covered by the dispute resolution procedure;
- (h) the grounds on which the dispute resolution entity may refuse to deal with a given dispute in accordance with article 5(4) of the Directive;
- (i) a reasoned statement on whether the entity qualifies as an ADR entity falling within the scope of the Directive and complies with the quality requirements set out in Chapter II of the Directive.

Information on second anniversary and every second year thereafter.

2. An ADR entity shall provide the competent authority with the following updated information, in accordance with regulation 14(4)–

- (a) the number of disputes received and the types of complaints to which the complaints related;
- (b) the percentage share of ADR procedures which were discontinued before an outcome was reached;
- (c) the average time taken to resolve the disputes received;
- (d) the rate of compliance, if known, with the outcomes of the ADR procedures;
- (e) any systematic or significant problems that occur frequently and lead to disputes between consumers and traders (the information communicated in this regard may be accompanied by recommendations as to how such problems can be avoided or resolved in future);
- (f) where applicable, an assessment of the effectiveness of the ADR entity's cooperation within networks of ADR entities facilitating the resolution of cross-border disputes;
- (g) where applicable, the training provided to natural persons in charge of ADR in accordance with regulation 17;
- (h) an assessment of the effectiveness of the ADR procedure offered by the entity and of possible ways of improving the ADR entity's performance.

SCHEDULE 2

REQUIREMENTS AN ADR ENTITY SHALL MEET

Regulation 11

Access to the ADR entity.

1. An ADR entity shall meet the following requirements, in order to facilitate access by consumers to the ADR entity—

- (a) maintain an up-to-date website which provides the parties with easy access to information concerning the ADR procedure, and which enables consumers to submit a complaint and the requisite supporting documents online;
- (b) provide the parties, at their request, with the information referred to in subparagraph (a) on a durable medium;
- (c) enable the consumer to submit a complaint offline, where applicable;
- (d) enable the exchange of information between the parties via electronic means or, if applicable, by post;
- (e) accept both domestic and cross-border disputes, including disputes covered by the EU Regulation;
- (f) when dealing with disputes covered by these regulations, take the necessary measures to ensure that the processing of person data complies with the Data Protection Act 2004.

Expertise, independence and impartiality.

2.(1) An ADR entity shall ensure that its ADR officials possess the necessary expertise and are independent and impartial.

(2) An ADR entity shall ensure the requirements in subparagraph (1) are met by ensuring the ADR official—

- (a) possesses a general understanding of the law and the necessary knowledge and skills relating to the out-of-court or judicial resolution of consumer disputes, to be able to carry out his functions competently;

- (b) is appointed for a term of office of sufficient duration to ensure the independence of his actions, and is not liable to be relieved from his duties without just cause;
- (c) is not subject to instructions from either party or either party's representatives;
- (d) is remunerated in a way that is not linked to the outcome of the procedure;
- (e) discloses, without undue delay, to the ADR entity any circumstances that may, or may be seen to, affect their independence and impartiality or give rise to a conflict of interest with either party to the dispute they are asked to resolve.

(3) The obligation, under subparagraph (e), shall—

- (a) only apply where the ADR entity comprises of more than one natural person; and
- (b) it shall be a continuing obligation throughout the ADR procedure.

(4) The competent authority shall ensure the ADR entity has in place the following procedures in the event that an ADR official declares, under subparagraph (e), or is discovered to have a conflict of interest in relation to a dispute€

- (a) where possible, the ADR official is replaced by another ADR official to handle the dispute; or
- (b) where it is not possible to replace the ADR official—
 - (i) the ADR official shall refrain from conducting the ADR procedure; and
 - (ii) the ADR entity shall, where available, propose to the parties that they submit the dispute to another ADR entity which is competent to deal with the dispute; or
- (c) where the dispute cannot be transferred to another ADR entity, the ADR entity shall inform the parties to the dispute—

- (i) of the circumstances of the conflict of interest;
- (ii) that they have the right to object to the conflicted person continuing to handle the dispute, and

the ADR official shall only continue to deal with the dispute if no party to the dispute objects.

(5) The competent authority shall ensure that where an ADR official is employed or remunerated exclusively by a professional organisation or a business association of which the trader is a member, the ADR entity has a separate and dedicated budget at its disposal which is sufficient to carry out its functions as an ADR entity.

(6) The competent authority shall ensure that where the structure of the ADR entity is to have a collegial body of representatives of both professional organisations or business associations and consumer organisations, its ADR officials comprise an equal number of representatives of consumers' interests and traders' interests.

(7) Subparagraph (5) shall not apply where the ADR entity is made up of a collegial body as described in subparagraph (6).

Transparency.

3.(1) An ADR entity shall make the following information publically available—

- (a) its contact details, including postal address and email address;
- (b) the fact that its listed in accordance with regulation 12;
- (c) the ADR officials, the method of the officials' appointment and the length of their mandate;
- (d) the expertise, impartiality and independence of the ADR officials, if they are employed or remunerated exclusively by the trader;
- (e) its membership in networks of ADR entities facilitating cross-border dispute resolution, if applicable;
- (f) the types of disputes it is competent to deal with, including any threshold if applicable;

- (g) the procedural rules governing the resolution of a dispute and the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with paragraph 7 of this Schedule;
- (h) the languages in which complaints can be submitted to the ADR entity and in which the ADR procedure is conducted;
- (i) the types of rules the ADR entity may use as a basis for the dispute resolution (for example; legal provisions, considerations of equity, codes of conduct);
- (j) the preliminary requirements, if any, the parties are required to meet prior to an ADR procedure being instituted, including the requirement that an attempt be made by the consumer to resolve the matter directly with the trader;
- (k) whether the parties can withdraw from the ADR procedure;
- (l) the costs, if any, to be borne by the parties, including the rules, if any, on awarding costs at the end of the procedure;
- (m) the average length of each ADR procedure handled by the ADR entity;
- (n) the legal effect of the decision of the ADR procedure, including whether the decision is enforceable and the penalties for non-compliance with the decision, if any;
- (o) the enforceability of the ADR decision, if relevant;
- (p) whether the ADR procedures conducted by the ADR entity may be conducted in writing, verbally or by both means; and
- (q) the annual activity report required to be prepared under regulation 14(3).

(2) The information referred to in subparagraph (1) shall be provided on the ADR entity's website, on a durable medium, where requested, and by other means the ADR entity considers appropriate, and must be clear and easily understandable.

Effectiveness.

4.(1) The competent authority shall ensure the ADR procedures are effective and fulfil the following requirements—

- (a) the ADR procedure is available and easily accessible to both parties irrespective of where they are located, including by electronic means and non-electronic means;
- (b) the parties have access to the procedure without being obliged to retain a lawyer or legal advisor but this shall not deprive the parties of their right to independent advice or to be represented or assisted by a third party at any stage of the ADR procedure;
- (c) the ADR procedure is free of charge or available at a nominal fee for consumers;
- (d) the ADR entity, after receipt of a complaint, shall notify the parties as soon as it has received all the documents containing the relevant information relating to the complaint; and
- (e) subject to subparagraph (2), the decision of the ADR procedure is made available within 90 calendar days from the date on which the ADR entity has received the complete complaint file;

(2) In the case of highly complex disputes, the ADR entity may, at its own discretion, extend the 90 calendar days and shall inform the parties of such extension of the period and of the expected length of time that will be required to conclude the dispute.

Fairness.

5.(1) An ADR entity shall—

- (a) ensure during the ADR procedure that the parties may, within a reasonable period of time—
 - (i) express their points of view;
 - (ii) and are provided by the ADR entity, the arguments, evidence, documents and facts put forward by the other party, including a statement made or opinion given by an expert;
- (b) ensure a party may, within a reasonable period of time, comment on the information and documents provided under subsubsubparagraph (a)(ii);

- (c) inform the parties that they are not obliged to retain a lawyer or legal advisor but they may seek independent advice or be represented by a third party, although the parties may choose to do so at any stage of the ADR procedure;
- (d) notify the parties, in writing or on a durable medium, of the decision of the ADR procedure and provide a statement of the grounds on which the decision is based.

(2) Subject to subparagraphs (3) and (4), in relation to ADR procedures which aim at resolving the dispute by proposing a solution, an ADR entity shall ensure the parties–

- (a) have the possibility of withdrawing from the ADR procedure at any stage if they are dissatisfied with the performance or the operation of the procedure;
- (b) are informed, prior to the commencement of the ADR procedure, of their right under subparagraph (a);
- (c) are informed, prior to agreeing or following a proposed solution–
 - (i) of their choice whether to agree to or follow the proposed solution;
 - (ii) that participation in the ADR procedure shall not preclude the possibility of seeking redress through court proceedings;
 - (iii) that the proposed solution may be different from a judgment given by the court applying legal rules; and
 - (iv) of the legal effect of agreeing to or following such a proposed solution.
- (d) before expressing their consent to a proposed solution or amicable agreement are permitted a reasonable period of time to reflect.

(3) The Minister may make a declaration that the ADR procedure shall be binding, and shall publish a notice in the Gazette to that effect, and where such a declaration is made article 9(2) shall be read as applying to consumers.

Legality.

6. In ADR procedures which aim at resolving the dispute by imposing a solution on the consumer, the ADR entity–

- (a) where there is no conflict of laws, the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded to him by the provisions that cannot be derogated from by agreement under Gibraltar law;
- (b) shall where there is a conflict of laws–
 - (i) and where the law applicable to the sales or service contract is determined in accordance with article 6(1) and (2) of Regulation (EC) No 593/2008, the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded to him by the provisions that cannot be derogated from by agreement by virtue of the law of the Member State in which he is habitually resident;
 - (ii) where the law applicable to the sales or service contract is determined in accordance with article 5(1) to (3) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded to him by the mandatory rules of the law of the Member State in which he is habitually resident.

Grounds to refuse to deal with a dispute.

7.(1) An ADR entity may only refuse to deal with a domestic dispute or a cross-border dispute which it is competent to deal with on one of the following grounds–

- (a) prior to submitting the complaint to the ADR entity, the consumer did not attempt to contact the trader in order to discuss the complaint and seek to resolve the matter directly with the trader;
- (b) the dispute is frivolous or vexatious;
- (c) the dispute has previously or is currently under consideration by a different ADR entity or a court;

- (d) the value of the claim falls below or above the monetary thresholds set by the ADR entity;
- (e) the consumer did not submit the complaint to the ADR entity within the pre-specified time limit.
- (f) dealing with such a type of dispute would otherwise seriously impair the effective operation of the ADR entity.

(2) The pre-specified time limit referred to in subsubparagraph (e) shall not be set at less than one year from the date upon which the consumer submitted the complaint to the trader;

(3) The procedural grounds referred to in subparagraph (1) shall not apply in any case where its application will significantly impair consumers' access to ADR procedures, including in cross-border disputes.

(4) Where in accordance with its procedural rules, an ADR entity is unable to consider a dispute that has been submitted to it, the ADR entity shall provide both parties with a reasoned explanation of the grounds for not considering the dispute within 3 weeks of receiving the complaint file.

(5) An ADR entity may establish pre-specified monetary thresholds in order to limit access to ADR procedures, provided that such thresholds are not set at a level at which they significantly impair the consumer access to complaint handing by ADR entities.

(6) The competent authority shall ensure the pre-specified monetary thresholds referred to in subparagraph (5) are not set at a level at which they significantly impair the consumer access to complaint handing by ADR entities.

Extra requirements where the natural persons are employed or remunerated by the individual trader.

8.(1) The competent authority shall ensure that an ADR entity, where the ADR officials are employed or remunerated exclusively by the individual trader, notifies the competent authority, in addition to the information and statements referred to the preceding paragraphs of this Schedule, the information necessary to assess the ADR entity's compliance with the specific additional requirements of independence and transparency set out subparagraph (2).

(2) The extra requirements referred to in subparagraph (1) are as follows—

- (a) the natural persons in charge of dispute resolution are nominated by, or form part of, a collegial body composed of an equal number of representatives of consumer organisations and of representatives of the trader and are appointed as result of a transparent procedure;
- (b) the natural persons in charge of dispute resolution are granted a period of office of a minimum of 3 years to ensure the independence of their actions;
- (c) the natural persons in charge of dispute resolution commit not to work for the trader or a professional organisation or business association of which the trader is a member for a period of 3 years after their position in the dispute resolution entity has ended;
- (d) the ADR entity does not have any hierarchical or functional link with the trader and is clearly separated from the trader's operational entities and has a sufficient budget at its disposal, which is separate from the trader's general budget, to fulfil its tasks.

SCHEDULE 3

**INFORMATION TO BE INCLUDED IN THE LIST MAINTAINED
BY A COMPETENT AUTHORITY**

Regulation 12

The following information shall be included in the list to be maintained by the competent authority referred to in regulation 12–

- (a) the name, contact details and website address of an ADR entity;
- (b) an ADR entity's fees, if applicable;
- (c) the language or languages in which complaints can be submitted and the ADR procedure conducted;
- (d) the types of disputes covered by the ADR procedure;
- (e) the sectors and categories of disputes covered by each ADR entity;
- (f) the needs for the physical presence of the parties or of their representatives, if applicable, including a statement by the ADR entity on whether the ADR procedure is or can be conducted as an oral or written statement;
- (g) the binding or non-binding nature of the outcome of the procedure; and
- (h) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with article 5(4) of the Directive.

SCHEDULE 4

ADR ENTITY'S ANNUAL ACTIVITY REPORT

Regulation 14(3)

The ADR entity shall include the following information in its annual activity report, as referred to in regulation 14(3)–

- (a) the number of disputes received and types of complaints to which they related;
- (b) any systematic or significant problems that occur frequently and lead to disputes between consumers and traders which the ADR entity has become aware of (such information may be accompanied by recommendations as to how such problems can be avoided or resolved in future, in order to raise traders' standards and to facilitate the exchange of information and best practices);
- (c) the rate of disputes the ADR entity has refused to deal with and the percentage share of the types of grounds for such refusal as referred to in paragraph 7 of Schedule 2;
- (d) in the case of procedures referred in point (a) of article 2(2), the percentage shares of solutions proposed or imposed in favour of the consumer and in favour of the trader, and of disputes resolved by an amicable solution;
- (e) the percentage share of ADR procedures which were discontinued and, if known, the reasons for their discontinuation;
- (f) the average time taken to resolve the disputes;
- (g) the rate of compliance, if known, with the outcomes of the ADR procedures;
- (h) cooperation of ADR entities within networks of ADR entities which facilitate the resolution of cross-border disputes, if applicable.