Before the Arbiter for Financial Services

Case ASF 205/2023

GD ('the Complainant')

vs

ETI Securities plc

(C55602) ('ETI' or 'the Service Provider')

Sitting of 5 March 2024

The Arbiter,

Having seen the **Complaint** made against ETI Securities plc ('ETI' or 'the Service Provider') relating to the financial instruments held in MEZ Capital ETI, Compartment II, ISINAT0000A15PX3 (the 'Investment'). The Service Provider is a two-tier securitisation vehicle whose activities have been notified to the Malta Financial Services Authority ('MFSA').

The Complaint, in essence, is a claim for damages suffered by the Complainant as a result of alleged mismanagement in the liquidation of the Investment, in which she says she was invested, which led to a significant devaluation of her assets held in the same Investment.

The Complaint[1]

In her Complaint, the Complainant premised that she was an investor in the structure referred to as a "two-tier securitisation vehicle", specifically in the financial instruments held in MEZ Capital ETI, Compartment 11, ISINAT0000A15PX3.

[1] Complaint Form on Page (P.) 1 - 9 with supporting documentation on P. 10 - 38.

The Complainant explained that by means of a notice dated 28 June 2018, published on the website of the Service Provider, ETI informed its investors that MEZ Capital ETI initiated the process for the liquidation of the investments subscribed in Compartment 19. It was added that, consequently, ETI additionally informed its investors that it shall also liquidate the assets forming part of Compartment 11, this being the compartment in which the Complainant held her investments.

The Complainant continued to explain that subsequent to these notices, ETI further notified its investors that the liquidation of MEZ Capital ETI was to be finalised in the year 2019.

The Complainant explained that the expected value of each share upon liquidation of MEZ Capital ETI was initially declared to amount to €1,674 per share. Soon after, the declared amount decreased to €1,549, and subsequently kept decreasing to €1,240 and €825, respectively. The Complainant submitted that such decreases in the value of each share held by investors, including those held by the Complainant, decreased without the provision of any reasonable or valid justification for such decrease by the Service Provider.

It was further submitted that although the liquidation of the assets held in the above-mentioned compartments was expected to be finalised in 2019, with the resultant effect that the Complainant was to get paid in that same year, such liquidation only concluded in March 2020.

The Complainant added that, apart from these delays in concluding the liquidation within the promised timeframe, the final value of the shares held by the Complainant were only of €501.34 for each share.

It was submitted that, on the other hand, according to a report commissioned by the independent audit firm Sonntag&Partner,[2] the value of each share should have been of around €1,875.26, as opposed to the value of €501.34.

It was explained that, as had happened when previous decreases in the value of the shares were announced to investors, no basis or explanation was provided by ETI or whosoever from them as to why the value of such shares had decreased at such an alarming rate. The Complainant submitted that it is

[2] An extract of which the Complainant attached as Doc 'PK1', P. 10.

therefore clear that the liquidation of MEZ Capital ETI failed to follow an established methodology and was completely disorganised.

The Complainant further submitted that it is abundantly clear that ETI together with the other respondents [sic!] failed in their obligations towards the Complainant as an investor and acted in an abusive and illegal manner in her regard.

The Complainant explained that although the respondents were formally requested by the Complainant and several fellow investors to furnish crucial information in relation to the computation of the net value of the assets of Compartment 11, as well as with respect to the basis and the criteria upon which each individual share was calculated, the respondents [sic] failed to provide such information to the Complainant.

It was submitted that there were several shortcomings in the administration and management of Compartment 11, with various unauthorised transactions, and payment of fees and additional substantial amounts without any basis, which transactions and payments were done for the benefit of all the respondents [sic], their related entities, and unknown third parties.

It was further submitted that this constituted fraudulent and illicit behaviour on the respondents' [sic] part and is in clear violation of their regulatory and financial obligations in the Complainant's regard.

The Complainant continued to explain that she proceeded by means of a judicial letter filed before the First Hall of the Civil Court against the respondents and Mr Andreas Woelfl, dated 11 January 2022 (98/2022).

The Complainant submitted that since the respondents [sic] remained in default, she had no option but to lodge this Complaint before the Office of the Arbiter for Financial Services.

The Complainant submitted a number of reasons for which, in her opinion, the Service Provider let her down. These are as follows.

The Complainant submitted that, first and foremost, as previously explained, there were delays in the liquidation of the assets held in Compartment 11 and to make matters worse, the previously declared value of each share held in such

Compartment decreased drastically, without any justification or explanation provided to the Complainant.

The Complainant submitted that, secondly, it is clear that the liquidation was conducted by the respondents or whosoever from them [sic] in the most disorganised manner, and that there was no transparency as to how the net value of the assets held by the investors was calculated. It was added that this is even more the case as although the Complainant, together with several other fellow investors, requested the respondents [sic] to provide them with information as to how this computation was conducted, and on what basis and criteria each individual share was calculated, their request was ignored, and no information was to date provided.

The Complainant reiterated that the respondents' behaviour, including the failure to provide information, is in breach of their regulatory and financial obligations towards the investors.

The Complainant submitted that, furthermore, the respondents' illegal, abusive, and fraudulent actions severely prejudiced the assets held by the Complainant in the said compartment, specifically because the value of such assets decreased in an alarming manner without any reasonable explanation.

It was submitted that, for this reason, the respondents [sic] are being held jointly and severally responsible for the damages sustained by the Complainant due to their fraudulent actions.

It was added that, as previously described, according to a report by Sonntag&Partner, the value of each share held by the Complainant was of €1,875.26. Therefore, given that the Complainant held 34 shares in the mentioned compartment, the total value of such shares be 31 December 2019 should have been €63,758.84.

It was submitted that, notwithstanding the above, the actual amount liquidated in the Complainant's favour was of €17,045.56, representing the value of €501.34 per share, liquidated in March 2020.

The Complainant submitted that, as a result, the Complainant is holding the respondents [sic] jointly and severally responsible for the consequential loss in the value of the shares held by her, amounting to €46,713.28, and this due to

the sheer illegality of the respondents' abusive and prejudicial actions described above.

Remedy requested

The Complainant requested the Arbiter to:

1. Declare that the respondents ETI Securities plc, ETI Malta plc, Argentarius ETI Ltd, and Securitisation Consultancy Ltd. Or whosoever from them, are responsible for all the damages suffered by the Complainant as a result of the devaluation of her assets held in MEZ Capital ETI, Compartment 11, ISINATooooA15PX, issued by ETI Securities plc which occurred during the course of the liquidation of such compartment;

2. Liquidate the damage suffered by the Complainant, including but not limited to the sum of €46,713.28; and

3. Condemn the respondents or whosoever from them to pay the Complainant that sum thus liquidated.

With costs against the respondents.

Having considered, in its entirety, the Service Provider's reply, including attachments,[3] submitted by Mr Andreas Woelfl, director of ETI Securities plc,

Where the Service Provider explained and submitted the following:

1. The Service Provider clarified that, for the avoidance of any doubt, ETI Securities plc is not a financial services provider. It was stressed that ETI does not and never did provide financial services in Malta or any other country. It was added that the company is therefore not licensed or otherwise authorised by the MFSA.

2. It was explained that ETI is a securitisation special purpose vehicle established under the Securitisation Act of Malta for the sole purpose of issuing asset backed securities to professional investors. It was added that as a special purpose vehicle the company does not and never had any employees but only the board of directors.

[3] P. 46 - 47, with attachments from P. 48 - 120.

3. It was explained that ETI stopped operations in March 2020 with the redemption of the last outstanding asset backed security. It was added that it stopped issuing securities in 2018 with the personal decision of Mr Woelfl to relocate from Malta to the principality of Liechtenstein, where Mr Woelfl had received regulatory approval for an issuance programme also eligible to be offered to the public.

4. It was explained that whilst operating, ETI offered licensed or authorised asset managers to repackage their investment strategy or reference portfolios into an asset backed security which could be offered to professional investors. These asset managers acted as advisors and decided on the allocation of the collateral portfolio within the asset backed security as well as responsible for distributing securities. It was added that ETI was handling the administration, reporting to the Malta Central Bank, creation and maintenance of the asset backed securities in the major clearing systems.

5. It was explained that the asset backed securities subject to the Complaint were originally structured for Buchner Financial Group. It was explained that during the business relationship ETI became aware of several cases of misconduct of the companies that form Buchner Financial Group, such as finding out that asset backed securities eligible only for professional investors were allocated to retail investors by German asset managers, and a case where a company of Buchner Financial Group calculated the values of non-performing loans that formed part of the collateral assets and did so in a way the non-performing bonds actually got valued implying negative yields (and thus generated performance fees for Buchner Financial Group). It was added that criminal investigations against the senior management were also in progress.

6. It was explained that ETI therefore terminated the business relationship with Buchner Financial Group, liquidated the asset backed security, and paid out the selling proceeds less fees through the clearing system to investors and filed a report to the German regulator about its findings. Later, Mr Woelfl also filed a police report.[4] It was added that since the

[4] The report and conversations with a German bank on the offering of asset backed securities to retail investors were attached to the Reply and can be found at P. 86 *et seq.*

reports were done in 2020 and 2021 as an update to the information provided.

7. It was added that in the meantime, the Swiss resident director of Financial Marketing Advisor got convicted for operating a pyramid scheme. He stepped down as director. It was added that Mr Schoenbauer, deputy of founder and owner Markus Buchner, got convicted of fraud. It was added that he is currently serving a five-year prison sentence in Austria. The police investigations against Mr Buchner are ongoing. It was explained that he stepped or had to step down as director of any regulated financial service provider, however he remained as the director of some of the non-licensed companies in the group.

8. Having clarified the business model and the fact that ETI is not a financial services provider, Mr Woelfl wanted to comment on several of the declarations made by the Complainant.

9. It was noted that although the asset backed securities subject to the Complaint got redeemed in March 2020, the Complainant declared she only got knowledge of the subject she is complaining about on 11 January 2022. It was added that the Complainant declared that she had complained to her service provider. It was submitted that ETI has no knowledge of whether or not she filed a complaint at her financial services provider; however, for the avoidance of any doubt, it was submitted that she never filed a complaint with ETI. It was added that she and her family and company filed a judicial letter at court which was responded to.

10. It was submitted that ETI had intended to finish the liquidation within 2019, but there had never been a statement on an exact date. It was explained that since the majority of the collateral assets within the asset backed security the liquidation tool a few months longer but in March 2020, just a few weeks later, the liquidation was finalised, and investors received the liquidation amount through the clearing system into their bank account.

11. It was stressed that ETI never published an “expected” amount for the liquidation value. It was explained that it is industry standard that within a liquidation the assets get sold and to calculate the redemption amount only after this selling of collaterals is finalised. It was submitted that it would not have made any sense to estimate a value for defaulted bonds that formed part of the collateral assets.

12. Reference was made to the Complainant’s reference to the independent audit form Sonntag&Partner. It was stated that Mr Woelfl does not know this auditor. It was submitted that it is not the auditor of ETI and never reached out to ETI for any questions. It was stressed that ETI never received the report the Complainant makes reference to; however, it was submitted that it cannot be imagined how an independent audit form, other than the auditor of the company, would calculate a liquidation amount without reaching out to the company and inspecting the company’s accounts.

13. ETI strongly opposed the statement that it has failed in its obligations to any investors. It was submitted that all obligations to investors were fulfilled in full and in line with the terms and conditions of the asset-backed securities.

14. ETI furthermore strongly opposed the statement that either the Complainant or any other investor ever formally requested any information about the calculation of the redemption amount. Reference was made to the Complainant’s own statement in the Complaint form that she only got to know on 11 January 2022, nearly two years after the redemption amount was paid out to investors.

15. ETI categorically and forcefully rejected any wrongdoing or execution of unauthorised transactions. It was submitted that all transactions within the liquidation were duly authorised by the board of directors and fully in line with the terms and conditions of the asset backed securities. It was added that, for the avoidance of any doubt, there is of course no requirement for an authorisation by investors.

16. It was submitted that, having regard to the attached reports and findings, it is ETI’s supposition that the Complainant is a wealth management client

of Buchner Financial Group and they misled her, blaming the issuer of the asset backed securities to distract from their own misconduct.

Other Considerations

The Arbiter notes that whilst this complaint was filed by Complainant against the Service Provider, this was preceded by a judicial letter filed before the First Hall of the Civil Court by several persons including the Complainant, against several persons including the Service Provider. This judicial letter in essence made the same complaint as that filed before the Arbiter.[5] In the said judicial letter the complainants, including GD, declare they are locally represented by P.L. Madeleine Firman.

In their official response[6] to the said official letter The Service Provider and others state, *inter alia*, that:

> "*Furthermore, the value of the investments had to be drastically reduced in view of the reserves which had to be created following the lawsuit instituted by Financial Marketing Advisors GmbH, a foreign company incorporated under the laws of Switzerland, … against the companies ETI Securities plc and ETI Malta Ltd … in the names of Prokuratur Legali Madeleine Firman noe vs ETI Securities PLC (C55602) et … in terms of which the plaintiff company is requesting the payment of Euro 656,434.66 for services allegedly rendered in relation to the same Compartment 11 in question. While these allegations are contested by the defendants, it was necessary to create reserves in order to safeguard the interests of entities while the proceedings are still ongoing, also since the said proceedings were unexpected at the time of starting the liquidation of the said compartment. The sender companies are confident that in the event of a positive result of the lawsuit in question, ETI Securities plc will have the opportunity to grant onto the investors an amount proportional to the reserves, after deducted all expenses that it may suffer as a result of this lawsuit".* [7]

[5] P. 11 - 14
[6] P. 15 - 16
[7] P. 16

Preliminary

Competence of the Arbiter

The Arbiter notes that ETI, in its Reply, raised issues that contest the competence of the Arbiter to hear the case, notably that (1) it is not a financial service provider and that (2) the Complainant is not an eligible customer. In other words, ETI is contesting the juridical interest and standing of both parties to this case.

The Arbiter must therefore first consider these claims in order to determine whether he has the required competence by virtue of Chapter 555 of the Laws of Malta to determine this dispute.

Having seen the transcript of the sitting held on the 22 January 2024,[8] where the Arbiter ordered the Parties to submit written notes of submissions on these two issues;

Having seen the notes of submissions presented by the Parties and the notes of submissions filed in reply;

The Arbiter is considering these pleas as follows:

Plea that ETI is not a financial services provider

In its reply, ETI claimed that:

> "*ETI Securities plc is not a financial services provider. ETI Securities plc does not and never did provide financial services in Malta or any other country. The company is therefore not licensed or otherwise authorised by the MFSA. ETI Securities is a Securitisation Special Purpose Vehicle established under the Securitisation Act (Malta) for the sole purpose of issuing asset backed securities to professional investors.*"[9]

In its note of submissions, ETI further added that "*By searching for ETI Securities plc at the MFSA Financial Services Register therefore no results come up as shown in the following screenshot*".[10]

[8] P. 121 - 122
[9] P. 125
[10] *Ibid*.

In its note of submissions in reply, the Complainant made the following submissions:

- It was conceded that the Registration Document issued by ETI dated 27 June 2014[11] states that in terms of the Securitisation Act[12] ETI "*does not currently require a domestic licence or other authorisation to conduct business as a securitisation vehicle in Malta*".[13] However, the MFSA was still notified that ETI was going to commence and conduct such a business in Malta

- It was noted that this notification "*demonstrates that the Respondent was conducting business under the authority of the MFSA to provide financial services in Malta, as otherwise no notification would have been necessary to be provided*".[14]

- It was argued that this notification "*is tantamount to ETI Securities plc being "otherwise authorised" by the MFSA to provide financial services in Malta*", and that this is in line with the definition of "financial services provider" under Chapter 555.[15]

- It was added that the MFSA not stopping ETI from providing its services to customers amounted to **tacit authorisation** by the MFSA.

In a second line of argumentation, the Complainant submitted that ETI is a financial services provider for the purposes of Chapter 555 of the Laws of Malta because the definition of "financial services provider" under the same law lists a number of activities that the service needs to be related to, including "*any other service which in the opinion of the Arbiter constitutes a financial service*".

In a third line of argumentation, the Complainant submitted that as per Chapter 555 the financial services provider must be, or have been, resident in Malta, which ETI was.

[11] P. 24.
[12] Chapter 484 of the Laws of Malta.
[13] P. 144.
[14] P. 144 - 145.
[15] P. 145.

In a final line of argumentation, it was observed that Article 3 of the Securitisation Act provides that a securitisation vehicle may be

> "*… (d) any other legal structure which the competent authority may, by notice, permit to be used for a securitisation transaction, established under the laws of Malta or those of a jurisdiction recognised by the competent authority*".

The Complainant submitted that once the MFSA was fully aware that ETI was operating as a securitisation vehicle in Malta, it was duly permitted by it and thus the requirements of Chapter 555 were satisfied.

The Arbiter does not agree with the Complainant's lines of reasoning.

The Arbiter observes that Chapter 555 is clear on the fact that proceedings before his Office, be they mediation proceedings or adjudicatory proceedings, must be made against a financial services provider. Article 2 of Chapter 555 defines this entity as follows:

> "'*financial services provider' means a provider of financial services which is or has been licensed or otherwise authorized by the Malta Financial Services Authority in terms of the Malta Financial Services Authority Act or any other financial services law, and is related to investment services, banking, financial institutions, credit cards, pensions, insurance, and any other service which in the opinion of the Arbiter constitutes a financial service, which is or has been resident in Malta or is or has been resident in another EU/EEA Member State and which offers or has offered its financial services in and, or from Malta. A provider of financial services which has had its licence suspended or withdrawn by the competent authority, but which was licensed during the period in relation to which a complaint by an eligible customer is made to the Arbiter, shall be considered as falling within the definition of a financial services provider*".

This definition is clearly composed of two limbs:

1. The service provider having been at some point in time licensed or otherwise authorised by the MFSA in terms of the MFSA Act[16] or any other financial services law; and

2. The service provided being related to investment services, banking, financial institutions, credit cards, pensions, insurance, and any other service which in the opinion of the Arbiter constitutes a financial service.

The service provider must also have been at some point in time resident in Malta or another EU or EEA Member State.

It is noted that, despite these two limbs, it is clear that the operative part of this definition lies in the fact that the service provider has been licensed or otherwise authorised by the MFSA at law (be it under the MFSA Act or any other law) to provide the services listed in the second limb of the definition. The umbrella clause in the second limb, which reads "*any other service which in the opinion of the Arbiter constitutes a financial service*", is intended to capture the full gamut of financial services which may be licensed or otherwise authorised by the MFSA, since it is not possible, given the dynamics of the financial services industry, to compile an exhaustive list on this matter.

It is clear that the definition first lays down the principle that a financial services provider must be licensed or otherwise authorised, then lays down by whom (the MFSA) and finally lays down according to which law (the MFSA Act or any other financial services law).

Therefore, MFSA licence or authorisation is a *sine qua non* for the Arbiter to have jurisdiction to hear the case. The definition above clearly postulates two circumstances: being licensed or otherwise authorised by the MFSA in terms of the MFSA Act; or being so licensed or otherwise authorised by the MFSA in terms of any other financial services law.

The Arbiter considers that one must interpret the law as holistically as possible, particularly in such an area as the financial services sector where various laws regulate a given sector.

[16] Chapter 330 of the Laws of Malta.

Therefore, the definition in Chapter 555 must be understood in light of the MFSA Act.

The MFSA Act distinguishes between licences and other forms of authorisations on one hand and the MFSA's supervisory functions on the other. This clearly emerges from the definition of "person" under that Act:

> "'*person' includes any entity corporate or unincorporated which may hold a licence or other authorisation issued by the Authority or which falls within the supervisory or regulatory authority of the Authority*".

Therefore, persons can either be granted permission to operate by the MFSA, or there is no need to obtain such permission, but the person may still fall within the supervisory/regulatory jurisdiction of the MFSA. One will note that the part of the definition that has been underlined above, is not included in the definition of "financial services provider" under Chapter 555.

The Arbiter can only deduce that the legislator did not intend to apply Chapter 555 to any person who is not licensed or otherwise authorised by the MFSA even if such person falls within the supervisory or regulatory purview of the MFSA.

The Arbiter is of the very considered opinion that he should not interpret the definition of "authorisation" under Chapter 555 more widely than under the MFSA Act, to ensure homogeneity of legal interpretation. Under the latter Act, "authorisation" effectively means "any other permission that is not a licence". MFSA's supervisory/regulatory functions, however, may apply to entities that have not been licensed or given any other form of permission/authorisation.

The Arbiter accordingly deems that he does not have the competence to determine complaints filed against entities that fall only within the supervisory or regulatory authority of the MFSA without the need of being licensed or otherwise authorised.

It must now be determined whether ETI, the securitisation vehicle in question in the present proceedings, falls under the MFSA's supervisor or regulatory authority.

Article 5 of the Securitisation Act provides as follows:

"*Notwithstanding the provisions of any other law, and whatever the nature of the securitisation assets acquired or risks assumed by the securitisation vehicle, but without prejudice to article5A,* ***the securitisation vehicle shall not be required to obtain any licence, permit or authorisation other than as provided in this Act or in regulations made under the same Act*** *and in particular, but without limitation to the generality of the foregoing, shall not require any licence under the Investment Services Act, the Banking Act, the Financial Institutions Act and, save for what is provided in article 5A, the Insurance Business Act. The issuing and offering of financial instruments by a securitisation vehicle shall however still continue to be governed by the relevant provisions of the Companies Act and the Investment Services Act:*

Provided that nothing contained in this article shall affect any of the provisions of the Income Tax Act and the Income Tax Management Act."[17]

Article 18 then provides that:

"*No vehicle established under the laws of Malta shall commence business as a securitisation vehicle in or from within Malta unless it has given notice on the appropriate form to the competent authority that it intends to enter into one or more securitisation transactions.*"

Article 19(2) provides that:

"*A public securitisation vehicle shall, before issuing financial instruments to the public, apply in writing to the competent authority for a licence under this Act.*"

The Act regulating securitisation vehicles makes it amply clear that these vehicles only need licence or authorisation by the MFSA to perform the actions listed in Article 19(2) if they are public securitisation vehicles. Any other vehicle does not need a licence or authority.

[17] Emphasis in bold added by the Arbiter.

Reference is also made to the Securitisation Regulation (Regulation (EU) 2017/2402), which is partially given effect in Malta through the Malta Financial Services Authority Act (Securitisation) Regulations.[18] The MFSA is the competent authority to implement the provisions of the EU Regulation, and from both the Regulation and the Maltese subsidiary legislation it is clear that the MFSA exercises solely supervisory functions in relation to securitisation vehicles.

The MFSA can issue administrative penalties against the vehicle in its exercise of those functions, which means the MFSA has regulatory/supervisory functions. Nowhere is there mention of any license, authority or permission required by the MFSA for such securitisation vehicle not offering its service to the general public to operate.

Therefore, the Arbiter is of the considered opinion that these vehicles are authorised by operation of the law itself through the Securitisation Act. Normally one needs to apply for and be granted permission. Securitisation vehicles do not need to do so: they simply inform the MFSA that they are going to start operations in Malta (except as provided in Article 19(2) of the Securitisation Act).

The Arbiter does not believe that it is correct to say that in this case the MFSA grants permission to operate without a licence or there is some form of tacit authorisation by the MFSA – this permission is granted by the law itself. The MFSA just needs to be informed that the vehicle is operating in Malta so that it can act as supervisor/regulator and issue penalties where warranted.

The legislator determined that only public securitisation vehicles need to be licensed or authorised and, by consequence, for its investors to have the protection of Chapter 555.

The Arbiter observes, as did the Complainant in her note of submissions, that the Registration Document issued by ETI dated 27 June 2014[19] states that in terms of the Securitisation Act ETI

[18] SL 330.14
[19] P. 24.

> "*does not currently require a domestic licence or other authorisation to conduct business as a securitisation vehicle in or from Malta. The Maltese regulator (MFSA) has, however, been notified by the Issuer that it shall commence and conduct business as a securitisation vehicle in or from Malta*".[20]

Therefore, ETI merely notified the MFSA that it was going to commence and conduct business as a securitisation vehicle and hence fell under the MFSA's supervisory and regulatory authority. No further licences or authorisations were required for that purpose.

The Arbiter concludes that ETI is not a financial services provider within the meaning of Chapter 555 of the Laws of Malta.

For the reasons stated above, the plea that ETI is not a financial services provider under Chapter 555 is being accepted.

Plea that the Complainant is not an eligible customer

In its Reply, ETI claimed that the Complainant is a "*wealth management client of Buchner Financial Group*" and not a client of ETI.[21]

In its judicial letter before the Civil Court, First Hall, dated 18 March 2022,[22] in reply to the Complainant's judicial letter before the same Court dated 11 January 2022,[23] ETI wrote that:

> "*the interpellants of the letter were not registered investors of financial instruments issued by the mentioned cell, and therefore the company ETI Securities plc does not recognise them as investors of the said financial instruments …*".[24]

The Complainant opposes this claim.

[20] P. 28.
[21] P. 47.
[22] P. 15. This letter was submitted by the Complainant herself.
[23] P. 11. Incidentally, this letter was sent to more recipients than just ETI, and the Complainant was not the only signatory to the letter – contrary to the present proceedings.
[24] P. 15.

However, the Arbiter will not be entering into the relevant submissions by the Parties for the following reasons.

Article 2 of Chapter 555 defines an eligible customer as follows:

> *"'eligible customer' means a customer who is a consumer of a financial services provider, or to whom the financial services provider has offered to provide a financial service, or who has sought the provision of a financial service from a financial services provider. It includes the lawful successor in title to the financial product which is the subject of the relevant complaint and also consumer associations".*

It is clear that the appropriate complainant in proceedings before the Arbiter under Chapter 555 is, *inter alia*, the customer of a financial services provider. Given that the Arbiter has found that ETI, the respondent in these proceedings, is not a financial services provider, there is no doubt that the Complainant is not an eligible customer. Accordingly, the Complainant was not entitled to bring the present proceedings.

For the reasons stated above, the plea that the Complainant is not an eligible customer is also being accepted.

Decision

For reasons explained above, the Arbiter decides that he lacks competence to hear this case and is closing it without entering into its merits.

This without prejudice to the rights of the Complainant to pursue her Complaint in a court or tribunal that is not constrained by the competence provisions of Chapter 555.

As the case is being decided on the basis of preliminary pleas, each party will bear its own costs of these proceedings.

Alfred Mifsud
Arbiter for Financial Services

Information Note related to the Arbiter's decision

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap.555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in *computation or clerical or typographical or similar errors requested in terms of* article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11 (1)(f) of the Act.