Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 185/2025

DK

('l-Ilmentatur')

vs

MAPFRE MSV Life p.l.c. (C-15722)

('il-Fornitur tas-Servizz')

Seduta tat-30 ta' Jannar 2026

L-Arbitru,

Ra l-ilment,[1] fejn l-ilmentatur issottometta li ma jaqbilx mas-somma li qed tiġi offruta lilu mal-maturità tal-polza, u dan minħabba li wara ħamsa u għoxrin sena, din hija ferm 'il bogħod mis-somma li hu kien allegatament imwiegħed.

Huwa spjega li għalkemm oriġinarjament l-ammont imniżżel fil-polza kien ta' Lm8,186, wara għaxar snin żied il-*premium* li kien iħallas kull sena minn Lm100 għal €465.85, għall-ħmistax-il sena li kien fadal. B'hekk, l-Ilmentatur ma jqisx li s-somma offruta mal-maturità tal-polza, fil-valur ta' €13,817.13, hija suffiċjenti għaliex din ma tirriflettix iż-żieda fil-*premium*.

Għaldaqstant, huwa qed jitlob[2] li jingħata minn tal-inqas €35,000, abbażi taż-żieda fil-*premium* surreferita.

Ra t-tweġiba tal-Fornitur tas-Servizz[3]

"*Reply of MAPFRE MSV Life p.l.c. in terms of Chapter 555 of the Laws of Malta*

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[1] P. 1 – 5 b'dokumenti addizzjonali minn P. 6 – 66
[2] P. 3
[3] P. 75 – 80 b'dokumenti addizzjonali minn P. 81 – 85

1. *MAPFRE MSV Life plc ("MMSV") refers to the allegation made by the complainant that the maturity value of the Policy in question numbered 57820 of nature Endowment Policy with Sum Assured ("the Policy") was not equivalent to the* estimated maturity value *including reversionary and terminal bonus which was indicated by MMSV when the Policy was sold to the complainant. Consequently, the complainant is requesting the Honourable Arbiter to order MMSV to provide him with compensation in the amount of EUR35.000.*

2. *In this regard, MMSV is of the view that the claimant's request is unfounded and therefore, the complainant is not entitled to receive any compensation in addition to the maturity value as is going to be explained in further detail hereunder.*

3. *In the first place, the amount being requested by the complainant is based on estimates shown in the quotations, a handwritten signed copy presented as MSV DOC 1 and, another copy presented by the complainant (fol.012) together with this complaint. Therefore, none of the figures which were indicated in the quotations as "estimated" could be said to have been guaranteed.*

4. *The estimated maturity values shown in the quotation in question were calculated using the bonus rates that were being declared by MMSV at the time that the Policy was being sold.* ***<u>The estimated maturity values shown in the quotation were not guaranteed because they were based on the investment conditions and circumstances at the time.</u>*** *At the time, the bonus rate was much higher than it is today, with a rate of 5.75% in 2000 which started to decrease as from 2001 onwards with minor fluctuations throughout. The most important factor that affects bonus rates is the underlying investment performance and in recent years the investment returns internationally were lower.*

   <u>This shows that the quotations provided were indeed correct as it was issued according to the circumstances at the time, therefore, MMSV had acted in good faith.</u>

5. *The Important Notes (MSV DOC 2), delve into the meaning of "Reversionary Bonuses" and "Terminal Bonus". The said notes also explain*

*that the Policy was participating "**<u>in the Company's distribution of its profits by means of an allocation of Annual Reversionary Bonuses declared from time to time …</u>** Reversionary Bonuses, once declared, are guaranteed to be paid at maturity or on prior death of the Life Assured." **<u>Therefore, these notes explained that there was an element of investment to the Policy and that it was not obligatory for MMSV to declare reversionary bonuses every year but that it was in its discretion to do so.</u>** Therefore, the amount of LM5,953 that was indicated in the quotations as "Estimated Maturity Value including Reversionary Bonus" was not guaranteed because one needed to wait until the finalisation of the bonus declaration process in order to confirm whether MMSV was going to declare a reversionary bonus for the previous year and if in the affirmative at what rate, and it was only at that time that the complainant could have been certain of how the value of the Policy Account of their Policy was increasing over the years. This is so, because as was explained in the notes, it was only those bonuses which were declared by MMSV from time to time were in fact guaranteed to be paid to the complainant.*

6. *With regards to the "Terminal Bonus", the same document showing the Important Notes also explains that **<u>"Depending on its profits experience the Company may,</u>** after the end of the Policy's TENTH year, and ten year's full premia have been paid, decide to allocate from time to time a Terminal Bonus in addition to other declared bonuses… as they **<u>depend materially on the investment performance at the time of the claim, they may be reduced or even withdrawn altogether"</u>**. Therefore, <u>the amount being indicated in the quotation as "Estimated Maturity Value including Reversionary and Terminal Bonuses" of LM8,186 was likewise not guaranteed since it was highly volatile.</u>*

7. *In fact, the Life Policy Schedule (presented in the complaint as fol.019) provides that "in respect of each premium paid, LM91.38 shall be credited to the Policy Account which will be increased by the bonuses which **may** be declared by the Company from time to time." This continues to support what was provided for in the above-mentioned notes in relation to the fact that MMSV was not obliged to declare reversionary bonuses every*

year but once declared then they were guaranteed to be paid to the policyholders.

8. *Furthermore, the only amount mentioned in the Life Policy Schedule (fol. 019) was the sum assured of LM2,060 and no amounts containing the word 'Estimate' were mentioned in this Schedule, which further shows that according to the agreement between the parties the estimated maturity value including reversionary bonus and the estimated maturity value including reversionary bonus and terminal bonuses were never guaranteed.*

9. *The notes that formed part of the quotation (MSV DOC 2) also provided that "Whilst the purpose of these notes is to **guide** policyholders and prospective policyholders, the **conditions applying to all the benefits provided by the Policy are defined in the Policy document.** In case of conflict of meaning between this quotation and the Policy document, the Policy document shall prevail." **This meant that the complainant could not treat the quotation as a stand-alone document, but it had to be read and understood in the light of the notes that formed part of the quotation and more importantly in the light of the terms and conditions of the Policy document.***

10. *In addition, MMSV has observed what is contained in the Product Information Document (MSV DOC 3and 4) that "**The policy, on death or maturity, will pay out the basic Sum Assured or the Policy Account whichever is the greater**" since the maturity value is the Policy Account value, as it is greater than the sum assured.*

11. *Furthermore, the complainant also signed the second page of the above-mentioned Product Information Document declaring to have received and understood a copy of the document, a quotation showing the estimated cash surrender values and estimated maturity values, and the statutory notice where applicable. The document state the below:*

*"With Profits policies **may** earn **Reversionary** and **Terminal Bonuses**. the method of calculation is as follows:*

- *Reversionary Bonuses are calculated daily as a percentage of the Investment Premium whilst* ***Terminal Bonuses if declared at the option of the Company*** *are normally expressed as a percentage of the Policy Account or as a nominal amount after payment of the ten full years' premium*

- *A Terminal Bonus if declared is payable on policies that become claims by maturity or death, but not surrender*

- ***The rate of bonus earned will depend upon the performances of the Company and the investment market both locally and overseas***

- ***When presenting you with the Company's official written quotation for the Estimate Maturity Value we have based our calculations solely on current bonus rates***

- ***Please note the past performances are not necessarily a guide to future performance. Once Reversionary Bonuses are declared they are guaranteed****."*

12. *At the moment that the Policy was being sold, MMSV had provided the complainant with sufficient information about the Policy, including the fact that part of it was an investment, what the eventual maturity value shall be made up of and how the said amount was calculated including that the bonus rates may go up or down as expressly shown in the quotations and the other documentation provided by the Company.* ***Notwithstanding, the complainant is merely basing his claim on estimated maturity value without putting them in the context of all the documents provided to him when the Policy was being sold to him and every year thereafter as shall be explained hereunder.***

13. *MMSV continued to act in good faith even after the Policy was issued in favour of the complainant until the maturity thereof because it always managed the MSV With Profits Fund in the best interest of the policyholders, including the complainant. In fact, the said fund has been managed not only subject to the scrutiny of MMSV's executive management and investment committees, but also subject to the scrutiny*

of the independent actuary director of Willis Towers Watson and of the Malta Financial Services Authority. The performance of the said fund is entirely and always subject to the changes and shifts that take place in the value of the investment markets in which MMSV invests the investment premium of its policyholders. ***Therefore, the difference between the estimated maturity values shown in the quotations and the maturity value is merely reflective of the shift in the performance of the investment markets during the term of the Policy.***

14. *Although the value of the maturity could not match the estimated figures in the quotation due to shifts in market performance, the investment part of the Policy still rendered a good return when compared to other similar investments that were available during the Policy term, despite the challenges posed by three financial crises. Moreover, in 2018, asset classes worldwide recorded negative returns, and by the time the policy matured, investment markets had been significantly impacted by COVID-19. Nonetheless, the complainant made a gain of EUR4,195.06 after deducting the investment premium that was paid by the complainant from the maturity value, and this represents a rate of return-on-investment premium amounting to 2.96% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.48%.*

15. *It also needs to be emphasised that the maturity value of the Policy is tax free and that this benefit is not applicable in other forms of regular savings where the complainant would have been otherwise obliged to pay taxes from their return.*

16. *During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account of their Policy, how the said value was increasing every year and about the bonuses that were being declared by MMSV, which bonuses were being credited to the Policy Account of the Policy. This information was communicated to the complainant by MMSV by sending to him, on a yearly basis, a Policy Account Statement together with the so-called Important Notes. As from 2001, MMSV also started sending to the complainant, every year, a Media Release (copies of the Policy Account statements from 2001 till 2023 are presented as fol.037 – fol.058). Therefore, the complainant was fully*

aware of what bonuses were being declared and of the value of the Policy over the years. Apart from the use of the term "Estimated" which was conditional in the quotation which is self-explanatory, the Important Notes forming part of the Policy Account Statements mentioned above as well as the media releases have repeatedly made it clear that the bonus rates were not guaranteed and that they depended on the performance of the underlying investments, and therefore, said investments could go up as well as down. Therefore, the values of the Estimated Maturity Value including Reversionary Bonuses and Estimated Maturity Value including Reversionary and Terminal Bonuses indicated in the quotation could be varied depending on the performance of the investments during the term of the Policy.

17. *Furthermore, it needs to be noted that apart from the investment element, the Policy also provided a guaranteed life cover for the duration of the Policy. This amount was guaranteed to be paid upon death of the Life Assured, in fact it is referred to as the 'Basic Sum Assured' on the Policy Schedule (fol. 019) with an amount of LM2,060.00. Another characteristic of this Policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to EUR9,622.61 was in fact also guaranteed to be paid upon maturity or on prior death of the life assured and this in addition to the bonuses which would have been declared by MMSV during the term of the Policy. This was not the case with other investments, such as those known as unit-linked policies where no amounts were guaranteed.*

18. *Therefore, MMSV adhered to its obligations under the Policy because the Maturity value of the Policy exceeded the investment premium that was paid by the complainant by an additional EUR4,195.06 which represents the bonuses that have been declared by MMSV during the term of the Policy. Thus, despite the reduction in bonus rates over time, the Policy in question was still a valuable investment because in addition to the tax-free "Maturity Value", the Policy also provided cover on the complaint's life.*

19. *As explained, MMSV has met all its contractual obligations, because the quotation did not guarantee the estimated maturity values, but the*

estimated maturity values were only an indication of the potential performance of the Policy which could vary in the future.

20. *It is clear that the Policy does not guarantee payment of the estimated maturity values but guarantees that the **maturity value** is paid in the event that the life assured is still living when the Policy matures. The maturity value according to the Maturity Notification Letter issued one month in advance of the maturity date (fol. 060) states that "The Maturity Value shown here is illustrative and may be different if the bonus rates change or if the interest rate on premium/policy loans changes or if any outstanding premiums due remain unpaid". This implies that no estimate could crystallise the value that would be paid to the complainant on the maturity date of the Policy in question because that value could only be realised on the date of maturity of the Policy. Therefore, naturally the figures indicated on the quotations could not be guaranteed because the maturity value continues to change until the maturity date of the Policy and therefore the Company observed its obligations according to the Policy in question.*

21. *The comment by the complainant in the online complaint form (fol. 002), "… **they promised me** ..." has no basis, since the complainant signed the quotation showing estimated values and not an agreement showing a promised maturity value. The Company has always managed the MSV With Profits fund in the best interest of tis policyholders as explained earlier. Moreover, the company provided the complainant with yearly statements, keeping him informed on the performance of his investment. On the contrary, even thought the investment returns were decreasing, the Company always declared bonuses at its discretion.*

22. *MMSV maintains that the Policy was sold in accordance with the regulations that were applicable at the time when the Policy was being sold. In fact, the complainant was presented with the Statutory Notice (MSV DOC 5) that was issued in compliance with the provisions of the Life Insurance (Statutory Notice) Regulations, 1989. The Statutory Notice set out several warnings including the right of the complainant to withdraw*

from purchasing the Policy and the manner to do so. This Notice was intended to give policyholders the right to withdraw from the transaction when the policyholder may have second thoughts about the policy or was allegedly pressured to purchase the policy. However, in this case, the complainant did not exercise any of the said rights set out in the Notice and consequently agreed to proceed with the Policy.

23. Finally, MMSV maintains that it has always adhered to its obligations under the Policy and therefore, it should not be order to pay any compensation other than the final maturity value or any expenses that may be incurred in relation to this procedure because it has been instituted for no valid reason, as shall also be proved during the course of these proceedings.

With reservation for any further pleas."

Seduti

Fl-ewwel seduta tal-4 ta' Diċembru 2025, l-Ilmentatur xehed is-segwenti:

"***Ngħid li jiena xtrajt din il-policy li kienet għal 25 sena. Il-kuntratt kien sar fis-sena 2000.***

Ngħid li dak iż-żmien kont inħallas premium ta' Lm100 għal 25 sena u s-somma mwiegħda kienet ta' Lm8,186.

Ngħid li kelli d-dritt li nżidha u fil-fatt żidtha din il-policy u l-premium fl-ewwel għaxar snin kien irdoppja, b'10% kull sena tant li kien hemm mument li kont ħallast xi ħaġa niżżluhieli. Kienet telgħet Lm495 u mbagħad qaluli biex inħallas €465.85. Meta mbagħad ġejna biex għalqet din il-policy, offrewli s-somma ta' €13,800.

Nirreferi għall-quotation annessa mal-ilment tiegħi fejn hemm tliet figuri ta' Lm2,060, Lm5,953 u Lm8,186. U meta nsemmi s-somma mwiegħda inkun qed nirreferi għal din is-somma ta' Lm8,186 fuq din il-quotation.

Ngħid li dak iż-żmien li għamilt il-polza kont Assistant Manager it-Transport Malta. Naqra u nifhem bl-Ingliż.

Ngħid li kien ġie d-dar rappreżentant ta' Azzopardi Insurance Brokers. Ngħid li kienu saru żewġ laqgħat żgur għax l-ewwel tawni l-brief imbagħad tawni ċans naħsibha. Ngħid li l-meeting dam xi siegħa."[4]

Taħt kontroeżami, huwa stqarr illi:

"***Mistoqsi x'kien spjegali r-rappreżentant ta' Azzopardi Insurance Brokers meta ġie għandi fuq il-prodott, ngħid li l-ewwel kien spjegali x'inhu l-iskop tal-prodott li kien ta' tfaddil u affarijiet hekk.***

Ngħid li hu xogħolu biex ibiegħlek u jħajjrek x'ser tagħmel u dawn l-affarijiet. Jien diġà kelli xi insurances oħra u ddiskutejna fuq hekk ukoll. Ngħid li kelli poloz oħra mal-MSV, waħda fuqi u oħra fuq il-mara u mal-Eagle Star. Ngħid li dawn il-poloz diġà għalqu.

Ngħid li qabel din, kont għamilt polza oħra li pproponieli l-APS.

Qed niġi referut għal Dok MSV 1, u qed niġi mistoqsi xi spjegali fuq il-figura li hemm imniżżla ta' Lm2,000. Ngħid li ma niftakarx. Li niftakar tajjeb hu li qalli li huma qed jagħtuni l-medium range. Ngħid li hu kien qalli fuq l-oħra li jekk inżid il-premium, is-somma tikber u dawn l-affarijiet.

Mistoqsi naqbilx li għaddew 25 sena u ma niftakarx kelma b'kelma dak li spjegali, ngħid li dażgur li ma niftakarx kelma b'kelma. Mistoqsi naqbilx li mad-dokument tal-quotation, (Dok. MSV 1) is-Sur Maurizio tani d-Dok. MSV 2, l-Important Notes, id-Dok. MSV 3 u 4 li huma l-Product Information u Dok. MSV 5, l-iStatutory Notice, ngħid li iva u nikkonferma l-firma tiegħi fuq id-dokumenti MSV 4 u MSV 5.

Mistoqsi in vista ta' dawn id-dokumenti kif qed nippretendi dak li qed nitlob jekk dawn id-dokumenti qed jgħidu biċ-ċar li l-investimenti jistgħu jitilgħu u jinżlu u li xejn mhu garantit, ngħid li f'din jien mort ħażin għax jekk tqis l-ammont li ħallast, l-aktar waħda li kont inħallas, u l-aktar waħda li ħadt ftit. Ngħid li l-poloz li kelli mal-MSV u li għalqu sentejn ilu ma kinux b'dawn l-ammonti.

Qed niġi referut għall-paragrafu 3 ta' Dok. MSV 2 jgħid: 'The Estimated Maturity Values shown overleaf have been calculated using the bonus rates

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declared by the Company at the previous year end. Depending on the performance of the Company, bonus rates may go down as well as up. Bonus are calculated on a daily basis.'

Qed niġi mistoqsi kif qed nippretendi li kont ser nieħu dik is-somma li hemm indikata fil-quotation jekk hija stima biss u fejn qed jgħidli li jistgħu jitilgħu u jinżlu, ngħid li waħda għax wegħdni u l-oħra hi li jekk qed inħallas aktar mid doppju m'għandix nieħu l-istess ammont. Ma nifhimhiex din jien.

Nikkonferma li kont konxju li kien investiment.

Mistoqsi xtaqtx nagħmel investiment riskjuż fejn stajt nitlef il-kapital jew xtaqtx li jkun secure no matter what f'dak li qed ninvesti u nieħu return fuqu, ngħid li jiena nippretendi li din il-polza u b'dik is-somma mwiegħda, jekk ma tkunx dik is somma, ma tkunx daqshekk inqas. Nibqa' ngħid ir-raguni tiegħi: meta jien irduppjajt il-premium. Dak hu l-argument. Ngħid li le, ma ridtx investiment riskjuż.

Mistoqsi nafx ir-rate of return ta' din il-polza, ngħid li mhix sodisfaċenti.

Mistoqsi nafx li r-rate of return kienet ta' 3.5%, ngħid li iva."[5]

Fit-tieni seduta tat-13 ta' Jannar 2026, deher is-Sur Maurizio Iacono fejn xehed is-segwenti:

"***Nikkonferma l-firem tiegħi fuq dokumenti MSV1, il-quotation, li flimkien miegħu kien hemm Dok. MSV2, l-Important Notes; Dok. MSV3 u Dok. MSV4, il-Product Information.***

Nikkonferma l-handwriting tiegħi fuq il-Proposal Form; u nikkonferma l-firma tiegħi fuq Dok. MSV5, l-Avviż Statutorju.

Nikkonferma li biegħejt din il-polza lill-Ilmentatur.

Ngħid li jien niftakar sew li dawk il-karti li għadni kif ġejt muri huma l-aħħar parti tal-meeting. Imma qabel, ikun hemm a Lifelong Savings Exercise fejn naraw il paga u l-commitments tal-individwu peress li huwa a long-term commitment.

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Ovvjament, bħala Life Planning, wieħed ma jistax jaqbad u jitfa' ammont għax l-ammont irid jiġi ddeterminat skont il-paga, il-commitments u l-affordable income.

Ngħid li minbarra dawn id-dokumenti, kien ikun hemm aktar dokumenti pprovduti minn Azzopardi Insurance Brokers li kienu jgħinuni fl-ispjegazzjoni mhux mas-Sur DK biss imma ma' kull klijent li kont nara. Ngħid li kien ikun importanti ħafna dak l-exercise biex wieħed jiddetermina dak l-investiment li jkun qed imexxi fuqu.

Ngħid li dawn id-dokumenti kienu jgħinuni biex jiggwidawni biex nara jekk kienx tajjeb għalih jew le dan il-prodott. U, finalment, jekk hu komdu, li jikkommetti għalih.

Ngħid li bdejt naħdem ma' Azzopardi Insurance Brokers mill-1996. Minbarra Induction Course li kien intensiv ħafna, it-training kien isir kull ġimgħa u konna nagħmlu tutorials, case studies u affarijiet minn dawn. Apparti wkoll mal-Principal, on a regular basis, speċjalment meta jkun hemm xi amendments, jew xi prodotti ġodda, konna nassistu għal training.

Apparti minn hekk, aħna konna nkomplu nistudjaw maċ-Chartered Institute of Insurers, IFS u dan kollu. U, ovvjament, konna ġejna regulated kollha bażikament dak iż-żmien.

Nikkonferma li t-training on a weekly basis kien isir ma' Azzopardi Insurance Brokers.

Ngħid li lil dan il-klijent ma niftakrux u nikkonferma li ser nixhed mhux għax niftakar il-meetings u l-proċess li kelli speċifikament mas-Sur DK, imma ser nixhed b'mod ġenerali l-proċess li kont nuża mal-klijenti kollha.

Ngħid li kienet a standard practice kif jiena kont nimxi.

Ngħid li fil-meeting tal-bidu, il-klijent jara l-income tiegħu, il-commitments tiegħu. Jara għalxiex qed iħares. Ġaladarba wieħed jagħti indikazzjoni li jrid long term savings, wieħed jagħmlu konxju li huwa commitment, qisek qed tfaddal il flus u li ma jkollokx bżonnhom mil-lum għall-għada.

Ngħid li kont nimxi skont l-affordable income tiegħu għal xi jkun hemm fis-suq.

Ġaladarba jkolli l-go ahead tal-klijent, imbagħad, wieħed jibda jitkellem fuq il prodott per se. Dan il-prodott li qegħdin nitkellmu fuqu, li huwa savings, jiġi deskritt u mbagħad nipproċedu.

Ngħid li qatt ma konna ngħidu lill-klijent, 'Dan hu l-prodott għalik,' imma naraw x'jixtieq il-klijent.

Rigward xi spjegajt lill-klijent, ngħid li ż-żmien għadda u ma niftakarx dak kollu. Imma, in a nutshell, li dan qed iwarrab il-flus; li qed imorru f'kumpanija stabbli ħafna. Li huwa savings; u huwa on an estimated basis. Huwa a long-term commitment għax jekk dan, Alla jħares qatt, ma jkunx komdu jkompli jħallas jew xeba', hemm il-konsegwenzi li, jekk niftakar sew, kienu jgħidulhom Surrender Values. Għalhekk il-Life Planning kienet importanti ħafna biex niddeterminaw il premium.

Apparti dawk is-savings, hemm il-Life Cover li dik mill-ewwel ġurnata hija tiegħu. Ma nafx kemm kienet bħala perċentaġġ fuq il-Life Cover li jekk Alla jħares qatt jiġi nieqes, jingħata mill-ewwel lin-next of kin. U kull sena, jekk il-kumpanija jkollha performance tajba u jekk l-environment ikun tajjeb, jingħataw profits li huma dejjem ibbażati fuq estimates.

Kull sena joħroġ il-bonus statement u, ġaladarba joħroġ dan, dan huwa tal klijent.

B'referenza għall-quotation li kont ħriġt lill-Ilmentatur fejn hemm ħafna figuri, ngħid li hemm is-Sum Assured li kienet ta' Lm2,011. Kien hemm l-Estimated Reversionary Bonus li kien Lm5,845 u Estimated Reversionary and Terminal Bonus li huwa Lm8,037.

Ngħid li jien qatt ma ggarantejt lill-Ilmentatur li l-Estimated Reversionary Bonus kien ser jitħallas. Qatt ma tista' tagħmel hekk għax hu estimated. Estimated mhuwiex garanzija. Ngħid li dan inkun spjegajtu.

L-Estimated Reversionary Bonus, jekk niftakar sew, kien relatat mal-performance tal-andament ta' kull sena u kien jakkumula sena wara l-oħra.

L-Estimated Reversionary Bonus hija ħaġa u t-Terminal Bonus hija ħaġa oħra għaliex hija determinata minn żewġ fatturi, jekk niftakar sew. Hija l-

performance tal-kumpanija u l-environment globali li jista' jingħata u jista' ma jingħatax. Dik hija fid-discretion tal-kumpanija.

Jien qatt ma stajt niggarantixxi dak l-ammont tat-Terminal Bonus.

Ngħid li s-Sum Assured hija garantita plus il-premia kollha li klijent ikun ħallas. Għalhekk huwa mportanti l-life savings għax bis-Surrender Values wieħed seta' jitlef il-flus kieku ħareġ minnha qabel. Importanti li wieħed ikompliha sal-aħħar il-polza. Imbagħad, ovvjament, skont kemm ikunu akkumulaw il-bonuses matul iż-żmien u skont jekk il-kumpanija toħroġx jew le it-Terminal Bonus.

Ngħid li jien qatt ma stajt nagħti perċentaġġi, fuq jew 'l isfel, ta' kemm setgħu ivarjaw l-estimates. Ngħid li għalkemm il-polza kien ikollha xi figuri, dawn kienu dejjem estimates.

Kont insemmi wkoll li dan huwa long-term savings u huwa wkoll tax efficient."[6]

Taħt kontroeżami, huwa wieġeb illi:

"***Qed jingħad li meta jiena tajt il-quotation lill-Ilmentatur, jien kont prattikament iggarantejtlu l-ammont. Ngħid li jien qatt, qatt, qatt ma stajt niggarantixxi.***

Qed jingħad li fuq hekk kien inqala' inċident mal-boss tiegħi (is-Sur Azzopardi kien miżżewweġ lil oħt il-mara tal-Ilmentatur) fejn kellu xi flus miegħu investiti barra u kienu niżlu u jien għidtlu li żgur li mhux ser jiġri bħal dan.

Ngħid li dik hija ħaġa oħra li qed isemmi l-Ilmentatur.

Ngħid li qatt ma tista' ssemmi 'garanzija' għax m'hemm xejn miktub li hemm garanzija. I never vouched anything like that."[7]

Wara li r-rappreżentanti tal-Fornitur tas-Servizz ikkonfermaw li ma kellhomx iktar evidenza x'jippreżentaw, is-Sur Victor Farrugia, f'isem il-Fornitur tas-Servizz, ikkonferma b'ġurament ir-risposta tal-istess kumpanija.[8]

[6] P. 89 – 92
[7] P. 92
[8] Ibid.

L-Ilmentatur iddikjara li m'għandux xi jżid u jistrieħ fuq ix-xhieda tiegħu, filwaqt li l-Fornitur tas-Servizz għamel is-sottomissjonijiet finali tiegħu:

"***L-Ilmentatur qed jallega li ġie mwiegħed l-Estimated Maturity Value including Reversionary and Terminal Bonus. Però, la bil-miktub u lanqas bil-kelma dan ma ġie mwiegħed.***

L-unika ammont li ġie mwiegħed lilu bil-miktub hija s-Sum Assured u the greater of the Policy Account jekk huwa aktar.

Fil-fatt, din il-wegħda avverat ruħha għax tħallas aktar mis-Sum Assured.

Is-Sales Person għadu kif xehed li qatt ma seta' jwiegħed dak li hu estimated għax seta' jvarja u jgħid li qatt ma kien f'pożizzjoni li jgħid b'kemm seta' jvarja għax il futur ħadd ma jafu.

Għalkemm l-Ilmentatur qed jinsisti li l-ammont kien imwiegħed, huwa ammetta li kien jaf li hu investiment u l-figura tal-Estimated Maturity Value kienet ikkwalifikata diversi drabi fid-dokumentazzjoni kollha li ngħatatlu, inkluż il quotation, l-Important Notes u l-Product Information.

L-Ilmentatur ammetta li jaf jaqra bl-Ingliż u kien Assistant Manager ta' Transport Malta dak iż-żmien.

Fil-fatt, hu kien sodisfatt bil-poloz li mmaturawlu sentejn ilu u jidher li ma kienx qed jippretendi lanqas f'dak il-każ l-Estimated Maturity Value u, għalhekk, naħsbu li f'dan l-ilment kien forsi mhux sodisfatt bil-Maturity Value daqskemm ħa forsi bil-poloz ta' sentejn ilu, imma mhux qed jippretendi illi jieħu l-Estimated Maturity Value illi jidhru fil-quotations.

Għandu raġun li jkun iddispjaċut bil-varjanza minn dak li kellu fil-Quotation għall-Maturity Value, però, hija kienet stima għal ħamsa u għoxrin sena u wieħed ma jistax ibassar il-futur u jieħu dak u ma jkunx hemm varjanza.

Barra minn hekk, dak iż-żmien il-quotation kienet fattibbli; u ma kinitx lump sum imma kull sena jħallas ftit ftit.

L-Ilmentatur qal fix-xhieda tiegħu li s-Sales Person kien spjegalu li l-iskop kien għat-tfaddil. Fil-fatt, l-Ilmentatur faddal 3.4% gross.

L-Ilmentatur ammetta li m'għadux jiftakar kelma b'kelma x'qallu s-Salesman, u li kellu żewġ laqgħat fejn spjegalu u tah iċ-ċans jaħsibha.

Għal dawn ir-raġunijiet, inħossu li l-ilment m'għandux jiġi milqugħ."[9]

Sema' lill-partijiet.

Ra l-atti kollha tal-każ.

Jikkunsidra:

FIL-MERTU

L-Arbitru jrid jiddeċiedi l-każ b'referenza għal dak li, fil-fehma tiegħu, huwa ekwu, ġust u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.[10]

Il-punt kruċjali f'dan l-ilment jittratta l-ammont offrut lill-Ilmentatur mal-maturità tal-polza, liema ammont ivarja sostanzjalment minn dak allegatament miftiehem.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'ġie mwiegħed lill-Ilmentatur, u x'eventwalment ġie mogħti jew offrut lilu mal-maturità. Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan laħaqx *'l-aspettattivi raġonevoli u leġittimi tal-konsumaturi u dan b'referenza għaż-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għal-ilment.'*[11]

L-Arbitru għandu quddiemu żewġ pożizzjonijiet dwar dak li verament ġara u ntqal waqt il-laqgħa tal-bejgħ.

Ir-rappreżentant tal-Fornitur tas-Servizz iddikjara li, għalkemm huwa ma jiftakarx min kien l-Ilmentatur jew il-każ tiegħu x'kien, il-proċedura li kien jimxi magħha u l-ispjegazzjoni li kien jagħti waqt il-laqgħat kienu regolari u, għaldaqstant, l-istess mal-klijenti kollha. Il-verżjoni tar-rappreżentant, minkejja li hija waħda ġenerali, hija wkoll pjuttost dettaljata u l-Arbitru ma jara l-ebda raġuni għalfejn m'għandhiex tkun kredibbli.

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[9] P. 92 – 93

[10] Att dwar l-Arbitru għas-Servizzi Finanzjarji, Kapitolu 555 tal-Liġijiet ta' Malta, Artikolu 19(3)(b).

[11] Ibid. Artikolu 19(3)(c).

Mill-banda l-oħra, għandu jiġi analizzat x'wassal lill-Ilmentatur sabiex jisħaq fuq l-verżjoni tiegħu – jekk kienx hemm xi *misselling* min-naħa ta' Azzopardi Insurance Brokers, jew jekk din hijiex xi forma ta' memorja selettiva min-naħa tal-Ilmentatur li qed jiftakar jew jiddikjara biss dak li jaqbillu.

L-Ilmentatur spjega li r-rappreżentant tal-Fornitur tas-Servizz kien ġie jipprova jbiegħlu l-polza f'daru stess:

"***Ngħid li kien ġie d-dar rappreżentant ta' Azzopardi insurance Brokers. Ngħid li kienu saru żewġ laqgħat żgur għax l-ewwel tawni l-brief imbagħad tawni ċans naħsibha. Ngħid li l-meeting dam xi siegħa.***"[12]

Matul ix-xhieda u l-kontroeżami tiegħu, l-Ilmentatur jinsisti li ċertu ammont ġie mwiegħed lilu: "***... għax wegħdni ...***"[13] u "***... b'dik is-somma mwiegħda ...***"[14]

"***Ngħid li dak iż-żmien kont inħallas premium ta' Lm100 għal 25 sena u s-somma mwiegħda kienet ta' Lm8,186.***"[15]

"***Nirreferi għall-quotation annessa mal-ilment tiegħi fejn hemm tliet figuri ta' Lm2,060, Lm5,953 u Lm8,186. U meta nsemmi s-somma mwiegħda inkun qed nirreferi għal din is-somma ta' Lm8,186 fuq din il-quotation.***"[16]

Meta ġie mistoqsi x'jiftakar mil-laqgħat, l-Ilmentatur qal li "***... l-ewwel kien spjegali x'inhu l-iskop tal-prodott li kien ta' tfaddil u affarijiet hekk***",[17] però, ammetta li "***... ma niftakarx kelma b'kelma***" għaliex għaddew ħamsa u għoxrin sena.[18] Barra minn hekk, meta ġie mistoqsi x'kien spjegalu r-rappreżentant dwar il-figura ta' Lm2,000 imniżżla fl-istima, huwa wieġeb li "***... ma niftakarx***."[19]

Iżda l-Ilmentatur qabel li r-rappreżentant tal-Fornitur tas-Servizz kien tah dokumenti oħra flimkien mal-kwotazzjoni, fosthom l-*Important Notes*,[20] il-*Product Information*,[21] u l-*Istatutory Notice*,[22] u kkonferma l-firma tiegħu fuq l-

[12] P. 87
[13] P. 88
[14] Ibid.
[15] P. 86
[16] Ibid.
[17] P. 87
[18] Ibid.
[19] Ibid.
[20] P. 82
[21] P. 83 – 84
[22] P. 85

aħħar tnejn.[23] Dawn ma jistgħux ma jingħatawx importanza meta wieħed iqis li l-Ilmentatur xehed, "***Naqra u nifhem bl-Ingliż***" u dak iż-żmien kien jaħdem bħala "***Assistant Manager it-Transport Malta***."[24]

Min-naħa l-oħra, fix-xhieda tiegħu, ir-rappreżentant tal-Fornitur tas-Servizz, li kien attenda għal bosta stħarriġ organizzat minn Azzopardi Insurance Brokers u ċ-Chartered Institute of Insurers,[25] stqarr li:

"***Ngħid li jien qatt ma ggarantejt lill-Ilmentatur li l-Estimated Reversionary Bonus kien ser jitħallas. Qatt ma tista' tagħmel hekk għax hu estimated. Estimated mhuwiex garanzija. Ngħid li dan inkun spjegajtu.***"[26]

Kompla jtenni matul ix-xhieda u l-kontroeżami tiegħu illi:

"***Jien qatt ma stajt niggarantixxi dak l-ammont tat-Terminal Bonus***",[27] "***… jien qatt, qatt, qatt ma stajt niggarantixxi***",[28] u "***... qatt ma tista' ssemmi 'garanzija' għax m'hemm xejn miktub li hemm garanzija. I never vouched anything like that.***"[29]

In vista ta' dawn iż-żewġ verżjonijiet dijametrikament opposti ta' x'intqal eżatt dwar is-somma ta' Lm8,186 fiż-żewġ laqgħat surreferiti, l-Arbitru jkollu jistrieħ fuq id-dokumenti u, ċioè, x'hemm miktub bl-iswed fuq l-abjad. Minkejja li l-Ilmentatur baqa' jsostni sal-aħħar li din is-somma ġiet imwiegħda lilu, huwa ma ressaq l-ebda prova ta' dan bil-miktub.

Għalkemm l-Ilmentatur irrefera għal "***kuntratt***",[30] fl-ebda ħin ma kkontesta l-fatt li d-dokument li l-partijiet bdew jirreferu għalih huwa kwotazzjoni jew inkella, li għandu fil-pussess tiegħu dan il-kuntratt; filwaqt li favur il-Fornitur tas-Servizz hemm il-kwotazzjoni u d-dokumenti annessi magħha, li b'mod ċar iwissu li s-somom huma biss indikazzjonijiet u '*estimates*', u li "*bonus rates may go down as well as up*".[31]

[23] P. 87
[24] P. 86
[25] P. 90
[26] P. 91
[27] Ibid.
[28] P. 92
[29] Ibid.
[30] P. 86
[31] P. 82

Meta l-Ilmentatur ġie mistoqsi kif Ippretenda li kien ser jieħu din is-somma meta kienet ingħatatlu biss stima, l-Ilmentatur reġa' tenna li dik is-somma kienet ġiet imwiegħda lilu mir-rappreżentant u għaliex wara għaxar snin kien żied il-*premium* li kien iħallas.[32]

Inoltre, l-Ilmentatur ammetta li kien konxju li din il-polza kien fiha element ta' investiment,[33] li r-rendiment tagħha huwa ta' 3.5%,[34] u li hu ma riedx investiment riskjuż: "***... le, ma ridtx investiment riskjuż***".[35]

Huwa evidenti li l-Ilmentatur mhuwiex kuntent bir-ritorn li għandu minn din il-polza, iżda fl-istess waqt, ma ppreżenta l-ebda prova li dak iż-żmien kellu għażla differenti għajr polza bħal dik ilmentata jew inkella kont bankarju b'rati inqas. B'hekk, l-Ilmentatur naqas milli jippreżenta xi tip ta' prova li huwa ġarrab xi tip ta' *opportunity loss* minħabba li ddeċieda li jixtri l-polza offruta abbażi tal-informazzjoni mogħtija.

Kif ukoll, l-Arbitru jinnota li l-polza in kwistjoni mhijiex l-ewwel jew l-unika waħda li qatt xtara l-Ilmentatur. Infatti, huwa xehed illi qabel ma xtraha:

"***Jien diġà kelli xi insurances oħra u ddiskutejna fuq hekk ukoll. Ngħid li kelli poloz oħra mal-MSV, waħda fuqi u oħra fuq il-mara u mal-Eagle Star. Ngħid li dawn il-poloz diġà għalqu. Ngħid li qabel din, kont għamilt polza oħra li pproponieli l-APS.***"[36]

Għaldaqstant, l-Ilmentatur kellu jkun konxju dwar kif jaħdmu dawn it-tip ta' prodotti u tal-fatt li l-ebda somma ma kienet garantita.

Madankollu, l-Arbitru josserva li abbażi tal-informazzjoni li l-Ilmentatur kellu fil-mument tal-bejgħ, huwa evidenti li qed iressaq dan l-ilment minħabba l-fatt li l-ammont offrut lilu mal-maturità tal-polza huwa ferm inqas minn dak li kien qed jistenna li jirċievi. Dan kemm għaliex l-Ilmentatur ma ngħatax '*spectrum*' ta' stimi u anke peress li l-Ilmentatur kien żied il-*premium* li kien iħallas kull sena minn Lm100 għal €465.85 wara għaxar snin. B'hekk, l-aspettattivi li huwa kellu ma ġewx milħuqa.

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[32] P. 88
[33] Ibid.
[34] Ibid.
[35] Ibid.
[36] P. 87

"***Ngħid li hu kien qalli fuq l-oħra li jekk inżid il-premium, is-somma tikber u dawn l-affarijiet***."[37]

"***... ngħid li f'din jien mort ħażin għax jekk tqis l-ammont li ħallast, l-aktar waħda li kont inħallas, u l-aktar waħda li ħadt ftit. Ngħid li l-poloz li kelli mal-MSV u li għalqu sentejn ilu ma kinux b'dawn l-ammonti***."[38]

"***... jekk qed inħallas aktar mid-doppju m'għandix nieħu l-istess ammont***."[39]

Biex tintlaħaq il-figura kkwotata jrid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli fl-2000, ma kinitx xi ħaġa li setgħet tiġi sostnuta u garantita għal ħamsa u għoxrin sena sħaħ. Għalhekk, għandu jiġi kkunsidrat il-fatt li anke persuna li mhijiex daqstant intiża fil-finanzi xorta tifhem li mhuwiex f'loku li tassumi li dawn ir-rati kienu ser jibqgħu f'dak il-livell għal ħamsa u għoxrin sena, speċjalment peress li l-kontribuzzjonijiet kienu mifruxa fuq medda ta' ħamsa u għoxrin sena, għall-kuntrarju ta' '*lump sum investment*' li tiġi nvestita mill-ewwel biex b'hekk torbot ir-rati tal-imgħax għal tul ta' żmien.

L-Arbitru jifhem li polza bħal din taħdem bil-mod kif spjegat mill-Fornitur tas-Servizz fit-tweġiba għall-ilment[40] u mhuwiex qed jiddeċiedi mod ieħor. Iżda minkejja dan, iħoss li l-Fornitur tas-Servizz seta' kien iżjed kawt fil-kwotazzjonijiet li ta. Minflok stima waħda, missu ħareġ '*spectrum*' sabiex tkun ċara f'moħħ il-klijent li xejn ma huwa garantit li ser jibqa' stabbli fuq perjodu ta' ħamsa u għoxrin sena u li minħabba f'hekk, is-somma finali jaf tvarja. Fil-fatt, eventwalment bdew joħorġu tliet stimi minflok waħda.

Għaldaqstant, għar-raġunijiet kollha mogħtija aktar 'il fuq f'din id-deċiżjoni, l-Arbitru jiddeċiedi li l-ilment huwa wieħed ġust, ekwu, u raġonevoli, u ser jilqgħu limitatament sakemm huwa kompatibbli ma' din id-deċiżjoni.

Kumpens

F'dan il-każ, l-Arbitru qed jagħti rimedju għaliex iħoss li l-aspettattivi tal-Ilmentatur, sal-limitu ta' fejn kienu leġittimi, ma ġewx milħuqa. L-aspettattivi tiegħu kienu li mal-maturità tal-polza, kien ser jirċievi minn tal-inqas is-somma

[37] P. 87
[38] Ibid.
[39] P. 88
[40] P. 75 – 80

ta' €35,000 (wara li preżumibbilment ikkalkola li l-ekwivalenti ta' Lm8,186 jiġi €19,073 u ma' dan l-ammont għadd ukoll iż-żieda fil-*premium*), iżda fid-data tal-maturità ġie offrut ferm inqas. Però, ma jistax jingħad li l-aspettattivi tal-Ilmentatur kienu għal kollox leġittimi.

L-Arbitru jrid jasal għal kumpens ibbażat fuq ġustizzja ekwitattiva kif huwa espressament meħtieġ li jagħmel skont l-Artikoli 19(3)(b) u 26 tal-Kapitolu 555 tal-Liġijiet ta' Malta. Għalkemm huwa jrid jaċċerta li dan l-ammont ikun raġonevoli, huwa diffiċli li jkun preċiż stante d-diversi fatturi li jridu jittieħdu in konsiderazzjoni.

L-ewwelnett, l-ammont offrut lill-Ilmentatur mal-maturità tal-polza ma kienx viċin dak oriġinarjament ikkwotat lilu, u fl-ebda ħin ma ddikjaraw li f'dak iż-żmien meta xtara l-polza seta' kkunsidra tipi ta' investimenti jew tfaddil ieħor. M'għamilx hekk għaliex ir-ritorn li kien ikun ikkwotat lilu aktarx kien se jkun inqas minn dak ikkwotat għal din il-polza.

Fl-istess waqt, iżda, l-Arbitru jqis ukoll li kien il-Fornitur tas-Servizz li avviċina lill-Ilmentatur sabiex ibiegħlu l-polza.

Fuq kollox, mingħajr preġudizzju għal dak iddikjarat hawn fuq, l-Arbitru ma jarax li l-Ilmentatur għamel telf minn din il-polza. Dan għaliex mit-total ta' €10,365.13 li huwa ħallas f'ħamsa u għoxrin sena, irċieva qligħ ta' €3,452.54, u dan apparti l-element ta' kopertura fuq il-ħajja.

Għalhekk, meta qies iċ-ċirkostanzi kollha tal-każ, l-Arbitru wasal għal deċiżjoni li ma jkunx ekwu li jilqa' t-talba sħiħa tal-Ilmentatur, u minflok jiddeċiedi li s-somma xierqa li għandha tingħatalu bħala kumpens hija dik ta' **€2,072.65.**

Għaldaqstant, ai termini tal-Artikolu 23(3)(c)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lil MAPFRE MSV Life p.l.c. tħallas lill-Ilmentatur is-somma ta' elfejn u tnejn u sebgħin ewro punt sitta ħamsa (€2,072.65) b'żieda mas-somma diġà offruta, ċioè, mas-somma ta' €13,817.67[41] u, għalhekk, tħallsu s-somma kumplessiva ta' €15,890.32.

[41] P. 8

B'imgħax ta' 2.15%[42] minn ħamest ijiem tax-xogħol wara d-data ta' din id-deċiżjoni sad-data tal-ħlas effettiv.

L-ispejjeż ta' dan il-każ huma għall-Fornitur tas-Servizz.

Alfred Mifsud
Arbitru għas-Servizzi Finanzjarji

<u>Nota ta' Informazzjoni relatata mad-Deċiżjoni tal-Arbitru</u>

Dritt ta' Appell

Id-Deċiżjoni tal-Arbitru legalment torbot lill-partijiet, salv id-dritt ta' appell regolat bl-artikolu 27 tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), magħmul quddiem il-Qorti tal-Appell (Kompetenza Inferjuri) fi żmien għoxrin (20) ġurnata mid-data tan-notifika tad-Deċiżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deċiżjoni skont l-Artikolu 26(4) tal-Att, mid-data tan-notifika ta' dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taħt l-Artikolu 27(3) tal-Att.

Kull talba għal kjarifika tal-kumpens jew talba għall-korrezzjoni ta' xi żbalji fil-komputazzjoni jew klerikali jew żbalji tipografiċi jew żbalji simili mitluba skont l-Artikolu 26(4) tal-Att, għandhom isiru lill-Arbitru, b'notifika lill-parti l-oħra, fi żmien ħmistax (15)-il ġurnata min-notifika tad-Deċiżjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, id-Deċiżjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji. Dettalji personali tal-ilmentatur/i jkunu anonimizzati skont l-Artikolu 11(1)(f) tal-Att.

[42] Rata kurrenti MRO (*Main Refinancing Operations)* tal-Bank Ċentrali Ewropew

L-Ispejjeż tal-Proċeduri

Skont l-Artikolu 26(3)(d) tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), l-Arbitru ddeċieda min għandu jħallas l-ispejjeż tal-proċeduri u f'liema proporzjon skont iċ-ċirkostanzi partikolari tal-każ.

L-ispejjeż tal-proċeduri jistgħu wkoll jinkludu kull pagament raġonevolment u legalment applikabbli ta' spejjeż professjonali u legali mħallsa mill-Ilmentatur, limitati għal atti ppreżentati matul il-każ. Tali spejjeż professjonali m'għandhomx jinkludu spejjeż ġudizzjarji jew ħlasijiet oħra kontinġenti magħmula barra l-proċeduri tal-każ.

L-ammont ta' tariffi u spejjeż rigward servizzi professjonali jew ta' konsultazzjoni mogħtija lill-konsumaturi relatati mat-talbiet jew proċeduri taħt l-Att, li jistgħu legalment u raġonevolment jintalbu bħala parti mill-ispejjeż tal-proċeduri, mhumiex speċifikati fid-dispożizzjonijiet preżenti tal-Att.

L-Arbitru jistenna iżda li tali tariffi u spejjeż għandhom jirriflettu t-tariffi u spejjeż hekk kif stipulati u applikabbli għal proċeduri magħmula fil-Qorti Ċivili ta' Malta fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili (Kap. 12).