

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,432, 29 ta' Mejju, 2015

Taqsimha C

Nru. 99

29. 05. 2015

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Ligi mressaq mill-Onorevoli Edward Scicluna, M.P., Ministru għall-Finanzi, u moqri għall-Ewwel darba fis-Seduta tal-25 ta' Mejju, 2015.

A BILL introduced by the Honourable Edward Scicluna, M.P., Minister for Finance, and read the First time at the Sitting of the 25th May, 2015.

ATT biex jemenda diversi ligijiet dwar servizzi finanzjarji, biex iwaqqaf l-Awtorità dwar ir-Risolvimenti u l-Kumitat dwar ir-Risolvimenti u biex jipprovdi dwar affarijiet ancillari jew incidental għalihom.

AN ACT to amend various financial services laws, to establish the Resolution Authority and the Resolution Committee and to provide for matters ancillary or incidental thereto.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

Abbozz ta' Ligi msejjah

ATT biex jemenda diversi ligijiet dwar servizzi finanzjarji, biex iwaqqaf l-Awtorità dwar ir-Risolvimenti u l-Kumitat dwar ir-Risolvimenti u biex jipprovdi dwar affarijiet anċillari jew inċidentali għalihom.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'ligi dan li ġej:-

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2015 li jemenda Diversi Ligijiet dwar is-Servizzi Finanzjarji. Titolu fil-qosor.

TAQSIMA I

EMENDI GHALL-ATT DWAR AWTORITÀ GĦAS-SERVIZZI FINANZJARJI TA' MALTA

2. Din it-Taqsima temenda u għandha tinqara u tinftiehem haġa waħda mal-Att dwar Awtorità għas-Servizzi Finanzjarji ta' Malta, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali". Emendi għall-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta. Kap. 330.

3. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej: Emenda tal-artikolu 2 tal-Att prinċipali.

(a) minnufih wara t-tifsira "Bord tal-Gvernaturi", għandha tiżdied it-tifsira ġdida li ġejja:

" "il-BRRD" tfisser id-Direttiva 2014/59/UE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Mejju 2014 li tistabbilixxi qafas għall-irkupru u r-risolviment ta' istituzzjonijiet ta' kreditu u ditti ta' investment u li temenda d-Direttiva tal-Kunsill 82/891/KEE, u d-Direttivi 2001/24/KE, 2002/47/KE, 2004/25/KE, 2005/56/KE, 2007/36/KE, 2011/35/UE, 2012/30/UE u 2013/36/UE, u Regolamenti (UE) Nru. 1093/2010 u (UE) Nru. 648/2012, tal-Parlament Ewropew u tal-Kunsill, kif emendati minn żmien għal żmien, u tinkludi kull miżura ta' implimentazzjoni, li timplimenta standards tekniċi, standards tekniċi regolatorji, linji gwida u miżuri bħal dawk li kienu jew jistgħu jigu maħruġa taħthom"; u

(b) minnufih wara t-tifsira "Direttur Ġenerali", għandha tizzied it-tifsira ġdida li ġejja:

" "istituzzjoni" tfisser istituzzjoni ta' kreditu jew ditta ta' investment";

Emenda tal-artikolu 4 tal-Att prinċipali.

4. Fis-subartikolu (2) tal-artikolu 4 tal-Att prinċipali, minflok il-kliem "il-Bord Ewropew dwar ir-Riskju Sistematiċi (ESRB) u entitajiet oħra", għandhom jidhru l-kliem "il-Bord Ewropew dwar ir-Riskju Sistematiċi (ESRB), il-Bank Ċentrali Ewropew (BĊE), il-Bord ta' Risolviment Uniku (SRB) u entitajiet oħra".

Żieda ta' artikoli ġodda mal-Att prinċipali.

5. Minnufih wara l-artikolu 7A tal-Att prinċipali, għandhom jiżdiedu l-artikoli ġodda li ġejjin:

"L-Awtorità dwar ir-Risolvimenti u l-Kumitat dwar ir-Risolvimenti.

7B. (1) Il-Bord tal-Gvernaturi għandu wkoll jaġixxi bħala l-Awtorità dwar ir-Risolvimenti, li għandha tkun l-awtorità mahtura għall-iskopijiet tal-artikolu 3 tal-BRRD.

(2) L-Awtorità dwar ir-Risolvimenti għandha tahtar Kumitat dwar ir-Risolvimenti. Il-kompożizzjoni, setgħat u funzjonijiet tal-Kumitat dwar ir-Risolvimenti għandhom ikunu regolati mid-dispożizzjonijiet stipulati fl-Ewwel Skeda u kif hemm f'kull regolament maħruġ taht dan l-Att. L-Awtorità dwar ir-Risolvimenti u l-Kumitat dwar ir-Risolvimenti għandhom ikunu indipendenti fl-operat tagħhom filwaqt li jaġixxu indipendentement minn xulxin u mill-Kunsill ta' Sorveljanza.

Regoli ta' Rkupru u Risolviment.

7Ċ. Bil-għan tal-aħjar twettiq u implimentazzjoni tad-disposizzjonijiet tal-Ewwel Skeda u tal-BRRD, l-Awtorità, permezz tal-Kumitat dwar ir-Risolvimenti, tista', minn żmien għal żmien, toħroġ u tippubblika Regoli dwar l-Irkupru u r-Risolviment li jkunu jorbtu lill-istituzzjonijiet u lil oħrajn hekk kif jista' jiġi speċifikat fihom. Dawk ir-Regoli jistgħu jstabbilixxu htigiet u kondizzjonijiet addizzjonali dwar l-irkupru u r-risoluzzjoni ta' istituzzjonijiet, kif imexxu n-negozju tagħhom, ir-responsabbiltajiet tagħhom, u kull haġ'ohra hekk kif il-Kumitat dwar ir-Risolvimenti jista' jqis li jkun xieraq."

6. L-artikolu 20D tal-Att prinċipali għandu jiġi enumerat mill-ġdid bħala l-artikolu 20E.

Enumerazzjoni mill-ġdid tal-artikolu 20D tal-Att prinċipali.

7. Minnufih wara l-artikolu 20Ċ tal-Att prinċipali, għandu jiżdied l-artikolu ġdid li ġej:

Żieda ta' artikolu ġdid mal-Att prinċipali.

"Setgħa għall-għemil ta' regolamenti dwar l-Awtorità dwar ir-Risolvimenti u l-Kumitat dwar ir-Risolvimenti.

20D. (1) Il-Ministru, li jaġixxi bil-parir tal-Awtorità dwar ir-Risolvimenti, jista' jagħmel regolamenti għall-għanijiet li ġejjin:

(a) biex jittrasponu, jimplementaw, u, jew jagħtu seħh lill-htigiet tal-BRRD;

(b) biex jimplementaw aħjar id-disposizzjonijiet tal-Ewwel Skeda;

(ċ) biex jipprovdu dwar is-setgħat u l-funzjonijiet tal-Kumitat dwar ir-Risolvimenti;

(d) biex jstabbilixxu u jimponu penalitajiet amministrattivi u mizuri amministrattivi oħra fuq l-istituzzjonijiet jew fuq oħrajn hekk kif dawn jistgħu jkunu jispeċifikaw;

(2) Meta jkunu ġew magħmula regolamenti kif hawn f'dan l-artikolu, l-Awtorità, permezz tal-Kumitat dwar ir-Risolvimenti, tista' toħroġ Regoli dwar l-Irkupru u r-Risolviment fil-kuntest tat-tifsir tal-artikolu 7Ċ ta' dan l-Att biex ikunu jistgħu jitwettqu aħjar, u jiġu implimentati aħjar, id-dispożizzjonijiet tar-regolamenti."

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Emenda tal-artikolu 29 tal-Att prinċipali.

8. Fl-artikolu 29 tal-Att prinċipali, minflok il-kliem "tal-Kumitat ta' Kordinazzjoni, tal-Kunsill ta' Sorveljanza,", għandhom jidhlu l-kliem "tal-Kumitat ta' Kordinazzjoni, tal-Kumitat dwar ir-Risolvimenti, tal-Kunsill ta' Sorveljanza,".

Żieda ta' Skeda ġdida mal-Att prinċipali.

9. Minnufih wara l-artikolu 30 tal-Att prinċipali għandha tiżdied l-Iskeda ġdida li ġejja:

"L-EWWEL SKEDA

IRKUPRU U RISOLVIMENT

Artikolu 7B.

Tifsir.

1. (1) F'din l-Iskeda, kemm-il darba r-rabta tal-kliem ma titlobx xort' oħra:

"Awtorità Ewropea dwar ir-Risolvimenti" tfisser awtorità li tkun f'xi pajjiż jew territorju barra minn Malta li jkun fi Stat Membru jew Stat ŻEE, u li tkun teżerċita xi funzjoni li tikkorrispondi għall-funzjonijiet tal-Kumitat dwar ir-Risolvimenti taht dan l-Att u Regolamenti dwar l-Irkupru u r-Risolviment;

"Awtorità ta' pajjiż terz dwar ir-Risolvimenti" tfisser awtorità li tkun qegħda f'xi pajjiż jew territorju li m'huwix Stat Membru jew Stat ŻEE u li jkun responsabbli biex iwettaq funzjonijiet komparabbli jew ekwivalenti għal dawk tal-Kumitat dwar ir-Risolvimenti konformement ma' dan l-Att;

"CRR" tfisser ir-Regolament (UE) Nru. 575/2013 tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 fuq htigiet prudenzjali għal istituzzjonijiet u ditti ta' kreditu u li jemendaw ir-Regolament (UE) Nru. 648/2012, kif emendat minn żmien għal żmien, u tinkludi kull mizura ta' implimentazzjoni li tkun inħarġet jew li tista' tinħareġ tahtu;

"ditta ta' investment" tfisser ditta ta' investment kif imfissra fil-punt (2) tal-artikolu 4(1) tal-CRR, li tkun sugġetta għall-htieġa ta' kapital inizjali stabbilita fl-artikolu 28(2) tad-Direttiva 2013/36/UE tal-Parlament Ewropew u tal-Kunsill dwar aċċess għall-attività ta' istituzzjonijiet ta' kreditu u s-sorveljanza prudenzjali ta' istituzzjonijiet ta' kreditu u ditti ta' investment;

"mizuri ta' risolviment" tfisser xi waħda jew aktar minn dawn li ġejjin:

- (a) il-bejgħ ta' negozju;
- (b) istituzzjonijiet li jgħaqqdu;
- (ċ) qsim tal-attiv; u
- (d) finanzjament tax-xorta *bail in*;

"risolviment" tfisser l-istrutturar ta' istituzzjoni ta' kreditu jew ditta ta' investiment permezz tal-applikazzjoni ta' xi miżura jew miżuri ta' risolviment sabiex jintlaħaq xi wieħed jew aktar mill-għanijiet imsemmija fil-paragrafu 3(2);

"setgħat ta' risolviment" tfisser is-setgħat mogħtija lill-Kumitat dwar ir-Risolvimenti kif hemm fir-Regolamenti dwar l-Irkupru u r-Risolviment.

(2) Kliem u frazijiet użati f'din l-Iskeda, iżda li m'humiex hawn imfissra, għandhom fil-kuntest tat-tifsir tal-BRRD.

Il-Kumitat dwar ir-Risolvimenti.

2. (1) Il-Kumitat dwar ir-Risolvimenti għandu jiżgura konformità sħiħa u kompluta mal-htigiet u l-obbligi preskritti b'regolamenti magħmulin taħt dan l-Att, sew direttament sew b'kollaborazzjoni mal-awtoritajiet Ewropej u ta' pajjizi terzi ta' risolviment, u jista', għal dawk l-għanijiet, jeżerċita kull setgħa li għandu taħt dan l-Att u taħt kull regolament magħmul tahtu.

(2) Il-Kumitat dwar ir-Risolvimenti għandu jkun magħmul minn tliet persuni, li jkunu persuna mahtura mill-Bank Ċentrali ta' Malta, persuna mahtura mill-Awtorità, u persuna mahtura mill-Ministeru responsabbli għall-Finanzi, li jkunu ddistingwew lilhom infushom f'affarijiet ta' xorta bankarja u finanzjarja jew li jkollhom esperjenza rilevanti fis-sorveljanza finanzjarja, fir-regolament, ir-risolviment u l-falliment ta' istituzzjonijiet.

(3) Il-ħatra ta' dawk il-persuni għandha tkun għal dak it-terminu, li jkun perjodu ta' mhux aktar minn tliet snin, kif jista' jigi speċifikat fl-ittra tal-ħatra, u jkunu eliġibbli li jerggħu jinhatru għal perjodu massimu ta' żewġ termini jew inkella għal perjodu massimu ta' sitt snin, liema minnhom ikun l-itwal. Dawn il-persuni għandhom jirċievu dik ir-rimunerazzjoni li l-Awtorità tista' minn żmien għal żmien tistabbilixxi.

(4) Id-dispożizzjonijiet tal-artikolu 6(3) sa (6) tal-Att għandhom, sa fejn dan ikun jgħodd, *mutatis mutandis* japplikaw għall-eliġibilità, it-terminu tal-kariga, it-tmiem u r-rizenja tal-Kumitat

dwar ir-Risolvimenti.

L-għanijiet tal-Kumitat dwar ir-Risolvimenti.

3. (1) Fit-twettieq tal-funzjonijiet generali tiegħu, il-Kumitat dwar ir-Risolvimenti għandu, safejn ikun raġonevolment possibbli, jaġixxi b'tali mod li:

- (a) ikun kompatibbli mal-għanijiet ta' risolviment; u
- (b) jnaqqas sew l-ispiza tar-risolviment u jevita d-distruzzjoni tal-valur tal-istituzzjoni.

(2) L-għanijiet ta' risolviment tal-Kumitat dwar ir-Risolvimenti huma biex:

- (a) jissalvagwardjaw l-kontinwità ta' funzjonijiet kritiċi;
- (b) inaqqsu sew ir-riskji għall-istabbiltà finanzjarja;
- (c) iħarsu l-fondi pubbliċi milli jnaqqsu d-dipendenza fuq sostenn finanzjarju pubbliku straordinarju;
- (d) iħarsu d-depozitanti, il-fondi u l-attiv tal-klijenti.

(3) (a) Il-Kumitat dwar ir-Risolvimenti ikollu s-setgħa li jeħtieġ kull assistenza u kollaborazzjoni minn kull istituzzjoni, hekk kif din tista' tkun meħtieġa biex ikun jista' jwettaq il-funzjonijiet tiegħu taħt din l-Iskeda.

(b) Kull istituzzjoni li tista' tenħtieġ mill-Kumitat dwar ir-Risolvimenti biex tipprovdi l-assistenza u l-kollaborazzjoni tagħha kif hawn fis-subparagrafu (3)(a) għandhom jikkonformaw minnufih ma' talba bħal dik għalkollox, mingħajr dewmien u f'dak id-dettall li jista' jkun meħtieġ.

Funzjonijiet u setgħat tal-Kumitat dwar ir-Risolvimenti.

4. (1) Mingħajr preġudizzju għal kull funzjoni jew setgħa oħra mogħtija lillu minn dan l-Att jew minn xi ligi jew regolamenti oħra, il-Kumitat dwar ir-Risolvimenti għandu l-funzjoni li:

- (a) jirrevedi u jiddeċiedi dwar ir-rakkomandazzjonijiet li jsirulu mis-Sezzjoni għar-Risolvimenti mwaqqaf kif hawn f'din l-Iskeda, dwar deċiżjonijiet ta' risolviment;
- (b) jikkordina mal-Awtorità u jikkonsultaha, dwar

affarijiet li jkollhom x'jaqsmu mal-estimi u r-rizorsi;

(ċ) jiskambja informazzjoni, fejn din tkun meħtieġa, mal-Awtorità;

(d) iwettaq dawk il-funzjonijiet l-oħra li jiġu assenjati lilu b'dan l-Att jew b'regolamenti magħmulin taħtu;

(e) japplika miżuri ta' risolviment meta xi istituzzjoni tkun qegħda tonqos jew x'aktarx li tonqos;

(f) jikkoopera mill-qrib mal-Awtorità fit-tnejn, l-ippjanar u l-applikazzjoni ta' deċiżjonijiet ta' risolviment;

(g) jikkoopera mal-awtoritajiet, kemm lokali kemm barranin, biex jikkordina miżuri ta' risolviment biex jiproteġi l-istabbiltà finanzjarja fl-Istati Membri kollha u l-Istati taż-ŻEE milqutin, u jikseb l-eżitu l-aktar effettiv għall-grupp kollu kemm hu, meta grupp transkonfini jkun qiegħed jonqos jew x'aktarx li jonqos;

(h) jikkoopera mal-awtoritajiet ta' risolviment Ewropew u ma' awtoritajiet ta' risolviment ta' pajjiżi terzi dwar kwistjonijiet li għandhom x'jaqsmu ma' risolviment;

(i) iwaqqaf arrangament ta' finanzjament dwar risolviment permezz ta' kontribuzzjonijiet obligatorji mill-istituzzjonijiet;

(j) jikkomunika mal-Awtorità dwar ir-Risolvimenti d-deċiżjonijiet tiegħu dwar risolviment li jeħtieġu implimentazzjoni;

(k) jimplimenta d-deċiżjonijiet dwar risolviment imsemmija fil-punt (j);

(l) jassisti lill-Awtorità dwar ir-Risolvimenti fuq kull haġa li taqa' taħt din it-Taqsima, li fuqha l-Awtorità dwar ir-Risolvimenti tkun qegħda tfittex għajnuna.

(2) Fit-twettiq tal-funzjonijiet generali tiegħu, il-Kumitat dwar ir-Risolvimenti għandu:

(a) jizgura li ma jkun hemm ebda kunflitt ta' interess mal-funzjonijiet ta' sorveljanza tal-Awtorità;

(b) jikseb l-approvazzjoni bil-miktub tal-Ministru, wara li jgħarraf lill-Awtorità dwar ir-Risolvimenti u l-Bank Ċentrali

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ta' Malta, qabel ma jittieħdu xi deċiżjonijiet li jista' jkollhom impatt dirett fiskali jew li jkollhom implikazzjonijiet sistematiċi;

(ċ) javża lill-Ministru, wara li jkun għarraf lill-Awtorità dwar ir-Risolvimenti, dwar kull deċiżjoni mehuda minnha konformement ma' dan l-Att.

(3) Il-Kumitat dwar ir-Risolvimenti għandu jkollu s-setgħat kollha meħtieġa biex ikun jista' jwettaq il-funzjonijiet tiegħu taħt dan il-paragrafu.

(4) B'żieda mas-setgħat mogħtija lill-Kumitat dwar ir-Risolvimenti taħt dan l-Att jew regolamenti magħmulin tahtu, il-Kumitat dwar ir-Risolvimenti għandu jkollu s-setgħa li:

(a) jigbor kontribuzzjonijiet minn istituzzjonijiet għal xi arrangament dwar il-finanzjar ta' xi risolviment;

(b) jistabbilixxi l-multi u l-pieni li jithallsu mill-istituzzjonijiet talli jkunu naqsu milli jikkonformaw ruħhom mad-deċiżjonijiet indirizzati lejhom;

(ċ) jigbor u jirkupra l-multi u l-pieni dovuti;

(d) jimponi, jippubblika u jigbor pieni amministrattivi imposti fuq xi persuna li l-imġiba tagħha, fil-fehma tal-Kumitat dwar ir-Risolvimenti, tkun tammonta għal kontravvenzjoni ta' xi waħda mid-dispożizzjonijiet ta' dan l-Att, jew ta' xi regolamenti magħmulin jew Regoli maħruġin tahtu u li jkunu jittrasponu l-BRRD, jew jekk dik il-persuna tkun naqset milli tikkonforma ma' xi Direttiva maħruġa mill-Kumitat dwar ir-Risolvimenti taħt dan l-Att, jew xi regolamenti magħmulin jew Regoli maħruġin tahtu u li jkunu jittrasponu l-BRRD.

(5) (a) Fit-tħaddim tas-setgħat tiegħu taħt is-subparagrafu (4)(d), il-Kumitat dwar ir-Risolvimenti jista', b'avviż bil-miktub u mingħajr il-htieġa ta' smiġh fil-Qorti, jimponi fuq dik il-persuna piena amministrattiva:

(i) sa darbtejn l-ammont tal-benefiċċju li jinkiseb mill-kontravvenzjoni, sakemm dak il-benefiċċju jkun jista' jiġi stabbilit;

(ii) fil-każ ta' persuna fizika, sa ħames miljun Euro (€5,000,000); jew

(iii) fil-każ ta' persuna ġuridika, sa 10% mill-

valur tal-bejgħ nett annwali totali tal-impriza matul is-sena kummerċjali ta' qabel inkluż il-qligħ gross li jkun jikkonsisti f'imghax jithallas u dhul ieħor bħal dak, dhul minn ishma u titoli oħra b'rendiment varjabbli jew fiss, u dhul minn kummissjonijiet jew drittijiet li jithallsu kif hemm fl-Artikolu 316 tal-CRR:

Izda, fil-każ ta' xi sussidjarja ta' impriza prinċipali, il-valur tal-bejgħ rilevanti jkun dak il-valur tal-bejgħ li jirriżulta mill-kontijiet konsolidati tal-impriza prinċipali ewlenija fis-sena kummerċjali ta' qabel.

(b) Meta il-Kumitat dwar ir-Risolvimenti jiddeċiedi li jimponi piena amministrattiva, dan għandu javża lill-persuna li fuqha tkun qegħda tiġi imposta l-piena permezz ta' avviż bil-miktub.

(ċ) Meta l-persuna li tiġi notifikata bl-avviż imsemmi fil-punt (b):

(i) tonqos milli tħallas lill-Kumitat dwar ir-Risolvimenti l-ammont tal-piena amministrattiva fi żmien tletin jum min-notifika tal-avviż, u tonqos milli tappella mid-deċiżjoni tal-Kumitat dwar ir-Risolvimenti quddiem il-Qorti ta' Ġurisdizzjoni Ċivili; jew

(ii) tappella quddiem il-Qorti ta' Ġurisdizzjoni Ċivili u tonqos fi żmien hmistax-il gurnata mid-deċiżjoni ta' dik il-Qorti milli tħallas il-piena amministrattiva kif tkun giet konfermata jew varjata minn dik il-Qorti,

għaldaqstant, f'kull każ, l-ammont tal-piena amministrattiva, kif tkun giet imposta oriġinarjament jew kif tkun giet imnaqqsa jew miżjuda, kif jista' jkun il-każ, għandu jkun dovut lill-Kumitat dwar ir-Risolvimenti bħala dejn ċivili, u għandhom japplikaw id-dispożizzjonijiet tal-punt (d).

(d) Avviż bħal dak imsemmi fil-punt (b), jew deċiżjoni tal-Qorti ta' Ġurisdizzjoni Ċivili, kif jista' jkun il-każ, għandhom malli ssir in-notifika tal-att ġudizzjarju ta' kopja tiegħu lill-persuna indikata fl-avviż, tikkostitwixxi titolu eżekuttiv għall-effetti u finijiet kollha tat-Titolu VII tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

(6) Meta tiġi imposta piena amministrattiva mill-Kumitat dwar ir-Risolvimenti kif hawn f'dan l-artikolu, dan għandu jkun mingħajr preġudizzju għal kull konsegwenza oħra tal-att jew ommissjoni tal-hati taht il-liġi ċivili jew dik kriminali:

Izda f'dawk il-kazijiet kollha fejn il-Kumitat dwar ir-Risolvimenti jimponi piena amministrattiva dwar xi haġa li ssir jew li tiġi ommessa milli ssir minn xi persuna u dak l-att jew dik l-ommissjoni jkunu wkoll jikkostitwixxu reat kriminali, ebda proċedimenti ma jistgħu jittiehdu jew jitkoplew kontra dik il-persuna dwar dak ir-reat kriminali.

(7) Il-Kumitat dwar ir-Risolvimenti għandu jinnomina lil xi uffiċjal mis-Sezzjoni għar-Risolvimenti biex jaġixxu bħala segretarju għal dak il-perjodu ta' żmien u taht dawk il-pattijiet li l-Kumitat dwar ir-Risolvimenti jista' jqis li jkunu xierqa.

(8) Il-Kumitat dwar ir-Risolvimenti jista' jistieden lil kull persuna u jista' jehtieg lil kull uffiċjal tas-Sezzjoni għar-Risolvimenti jew tal-Awtorità biex jattendu għal xi laqgħa tal-Kumitat dwar ir-Risolvimenti u jiehdu sehem fid-diskussjoni.

Pubblikazzjoni ta' pieni amministrattivi.

5. (1) L-Awtorità għandha tippubblika, fuq is-sit elettroniku uffiċjali tagħha u f'kull mezz ieħor ta' komunikazzjoni li jidhrilha xieraq, kull piena amministrattiva jew multa għal kontravvenzjonijiet tad-disposizzjonijiet tal-BRRD imposti mill-Kumitat dwar ir-Risolvimenti taht id-disposizzjonijiet ta' dan l-Att u ta' kull regolament magħmul jew Regoli maħruġin tahtu. Dawk il-pubblikazzjonijiet għandhom ikunu jinkludu informazzjoni fuq it-tip u x-xorta tal-kontravvenzjoni u l-identità tal-persuna li tiġi imposta l-penali fuqha, mingħajr ebda dewmien żejjed wara li dik il-persuna tkun giet mgharrfa b'dawk il-pieni:

Izda f'dawk il-kazijiet meta jsir appell mill-persuna li fuqha tiġi imposta xi piena amministrattiva jew multa, l-Awtorità għandha, mingħajr ebda dewmien żejjed, tippubblika wkoll fuq is-sit elettroniku uffiċjali tagħha u f'kull mezz ieħor ta' komunikazzjoni li tqis xieraq, informazzjoni fuq l-istat tal-appell u r-riżultat tiegħu.

(2) L-Awtorità għandha tippubblika l-pieni għal kull kontravvenzjoni tad-disposizzjonijiet tal-BRRD, imposti mill-Kumitat dwar ir-Risolvimenti taht id-dispożizzjonijiet ta' dan l-Att u of ta' kull regolament magħmul jew Regoli maħruġin tahtu, fuq bażi anonima, f'xi ċirkostanza minn dawn li ġejjin:

(a) meta l-piena tiġi imposta fuq persuna fiżika u, wara stima preċedenti obligatorja, il-pubblikazzjoni ta' data personali tkun sproprjonata;

(b) meta l-pubblikazzjoni tkun tipperikola l-istabbiltà

tas-swieq tal-offinancial jew xi investigazzjoni kriminali li tkun qegħda ssir;

(ċ) meta l-pubblikazzjoni tikkawża, safejn ikun jista' jiġi stabbilit, ħsara sproporzjonata lill-istituzzjonijiet, l-entitajiet imsemmija fil-punt (b), (ċ) jew (d) tal-artikolu 1(1) tal-BRRD jew tal-persuni fiżiċi involuti:

Iżda l-pubblikazzjoni fuq bażi anonima f'ċirkostanzi bħal dawn għandha tkun miżura eċċezzjonali li tkun tenħtieġ li tiġi ġustifikata b'rapport dettaljat kompilat mill-Kumitat dwar ir-Risolvimenti:

Iżda wkoll meta ċ-ċirkostanzi msemmija f'dan is-subartikolu x'aktarx li jtemmu f'perjodu ta' zmien raġonevoli, il-pubblikazzjoni taht dan l-artikolu tista' tiġi posposta għal dak il-perjodu ta' zmien.

(3) L-informazzjoni li tiġi publikata kif hawn f'dan l-artikolu għandha tibqa' tidher fuq is-sit elettroniku uffiċjali tal-Awtorità għal perjodu ta' mhux anqas minn hames snin. Id-data personali għandha tinzamm fuq is-sit elettroniku uffiċjali tal-Awtorità u fuq kull mezz ieħor ta' komunikazzjoni li jidhrilha xieraq biss għall-perjodu meħtieġ, kif hemm fid-dispożizzjonijiet tal-liġi ta' Malta dwar il-protezzjoni tad-*data*.

Setgħa li jiġi rkuprat id-dejn.

6. Il-Kumitat dwar ir-Risolvimenti jista' jibda proċedimenti quddiem il-Qorti ta' Ġurisdizzjoni Ċivili għall-irkupru bħala dejn kull ammont ta' pieni jew multi li jkunu dovuti lilha taht din it-Taqsima.

Setgħa li jinħarġu direttivi.

7. (1) Mingħajr preġudizzju għal kull setgħa mogħtija f'dan l-Att, il-Kumitat dwar ir-Risolvimenti jista', kull meta jidhirlu li jkun hekk meħtieġ, jagħtu, b'avviż bil-miktub, dawk id-direttivi li jista' jqis li jkunu xierqa fiċ-ċirkostanzi biex ikunu jistgħu jitwettqu l-funzjonijiet u d-dmirijiet preskritti b'dan l-Att, u b'kull regolament magħmul jew Regoli maħruġin tahtu u li jittrasponu l-BRRD.

(2) Is-setgħa li jingħataw direttivi taht dan l-artikolu għandha tinkludi s-setgħa li tiġi varjata, mibdula, miżjuda jew irtirata kull direttiva, kif ukoll is-setgħa li jinħarġu direttivi godda jew aktar direttivi.

(3) Kull persuna li jingħatalha avviz kif hemm fis-subparagrafu (1) għandha tobdi, thares u xort'ohra tagħti seħħ lil kull direttiva bħal dik fiż-żmien u bil-mod li jkun hemm dikjarat fid-direttiva.

(4) Meta l-Kumitat dwar ir-Risolvimenti jkun sodisfatt li ċ-ċirkostanzi jkunu hekk jeħtieġu, dan jista' f'kull żmien jippubblika kull direttiva li jkun ħareġ kif hawn f'dan il-paragrafu.

Is-Sezzjoni għar-Risolvimenti

8. (1) Għandu jkun hemm Sezzjoni għar-Risolvimenti li twettaq il-funzjonijiet assenjati lilha taħt dan l-Att, u hekk kif jista' jiġi assenjat lilha mill-Kumitat dwar ir-Risolvimenti.

(2) Is-Sezzjoni għar-Risolvimenti għandha minn żmien għal żmien tgħarraf lill-Kumitat dwar ir-Risolvimenti fuq l-attivitajiet u l-iżviluppi li jaqgħu fil-qasam ta' kompetenza tagħha.

(3) Is-Sezzjoni għar-Risolvimenti għandha tkun magħmula minn Direttur tal-Uffiċċju, u minn dak l-għadd ta' impjegati kif li jista' jkun meħtieġ biex ikunu jistgħu jitwettqu l-funzjonijiet tagħha kif imiss.

(4) Is-Sezzjoni għar-Risolvimenti għandha l-funzjoni li:

(a) tevalwa jekk istituzzjoni tkunx qegħda tonqos jew x'aktarx li tonqos, wara li tikkonsulta lill-Awtorità;

(b) tfassal pjanijiet ta' risolviment, wara li tikkonsulta lill-Awtorità, fuq kif għandha tittrattata l-istress finanzjarju jew xi nuqqas mill-istituzzjonijiet, inklużi fil-livell ta' grupp ta' kumpanniji;

(ċ) twettaq l-istima tar-risolvibilità ta' istituzzjonijiet;

(d) tikkopera, tkun medjatur u tiskambja informazzjoni, kif meħtieġ, mas-Sezzjonijiet rispettivament responsabbli għas-superviżjoni ta' istituzzjonijiet ta' kreditu u ta' ditti ta' investiment fi ħdan l-Awtorità.

Appell.

9. (1) Deċiżjoni meħuda mill-Kumitat dwar ir-Risolvimenti fir-rigward ta' xi miżura ta' prevenzjoni tal-kriżi jew fl-eżerċizzju ta' xi setgħa li għandha taħt dan l-Att jew taħt xi liġi oħra jew regolament, tista' tkun soġġetta għal appell minn persuna li tħoss ruħha aggravata bid-deċiżjoni.

(2) Jista' jsir appell minn deċiżjoni taħt is-subparagrafu (1) quddiem il-Qorti tal-Appell (Ġurisdizzjoni Inferjuri) kostitwita kif hemm fl-artikolu 41(6) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

(3) Appell quddiem il-Qorti tal-Appell (Ġurisdizzjoni Inferjuri) kostitwita kif hemm fl-artikolu 41(6) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandu jiġi ppreżentat fi żmien għoxrin gurnata minn meta d-deċiżjoni tal-Kumitat dwar ir-Risolvimenti tkun notifikata lill-istituzzjoni involuta.

(4) (a) Dak li tiddeċiedi l-Qorti tal-Appell (Ġurisdizzjoni Inferjuri) dwar deċiżjoni mehuda mill-Kumitat dwar ir-Risolvimenti għandha ssir kemm jista' jkun malajr.

(b) L-istimi ekonomiċi magħmulin mill-Kumitat dwar ir-Risolvimenti għandhom jintużaw bħala bażi mill-Qorti meta din tkun qegħda tirrevedi l-mizuri ta' manigġar ta' krizijiet involuti:

Iżda x-xorta kumplessa ta' dawk l-istimi m'għandhiex tipprevjeni lill-Qorti milli teżamina jekk il-provi li l-Kumitat dwar ir-Risolvimenti jkun qed iserraħ fuqhom ikunux preċiżi, affidabbli u konsistenti fil-fatti, u jekk dawk il-provi ikunx fihom kull informazzjoni rilevanti li għandha titqies sabiex tiġi stmata sitwazzjoni kumplessa u jekk ikunx jista' jissostanzja l-konkluzjonijiet li joħorġu minnhom.

(5) Ma jista' jsir ebda appell mill-manigġar ta' krizijiet.

(6) Il-fatt li gie ppreżentat appell m'għandux jissospendi l-effetti tad-deċiżjoni kontestata.

(7) Id-deċiżjoni tal-Kumitat dwar ir-Risolvimenti għandha tkun esegwibbli minnufih u għandha tkun tagħti lok għal preżunzjoni li tista' ma tintlaqax li talba għas-sospensjoni tal-infurzar tagħha ma jkunx fl-interess pubbliku.

(8) Meta jkun meħtieġ li jitharsu l-interessi ta' terzi li jkunu qegħdin jaġixxu *in bona fede* li jkunu akkwistaw ishma, titoli oħra ta' proprjetà, attiv, drittijiet jew passiv ta' xi istituzzjoni taħt ir-risolviment bis-saħħa tal-użu ta' għodda ta' risolviment jew l-eżerċizzju tas-setgħat ta' risolviment mill-Kumitat dwar ir-Risolvimenti, l-annullament ta' deċiżjoni tal-Kumitat dwar ir-Risolvimenti m'għandux ikun jolqot lil xi atti amministrattivi jew operazzjonijiet sussegwenti konkluzi mill-Kumitat dwar ir-Risolvimenti li kienu bbażati fuq id-deċiżjoni annullata. F'dak il-każ, ir-rimedji għal deċiżjoni jew azzjoni skorretta mill-Kumitat dwar ir-Risolvimenti għandha tkun limitata għal kumpens għat-telf imġarrab mill-appellant bħala rizzultat tad-deċiżjoni jew tal-Att.

Hruġ ta' mandat kawtelatorju.

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10. Minkejja kull liġi oħra, ebda mandat kawtelatorju jew ordni oħra taħt xi liġi oħra m'għandhom jinħargu mill-Qorti jew mit-Tribunal biex iżommu lill-Kumitat dwar ir-Risolvimenti from milli jieħu xi azzjoni, inkluża xi miżura ta' prevenzjoni ta' krizi jew xi miżura ta' maniġġar ta' krizijiet, taħt dan l-Att, jew taħt xi regolamenti maħruġin taħtu jew taħt xi liġi oħra."

TAQSIMA II

EMENDI GHALL-ATT DWAR SERVIZZI TA' INVESTIMENT

Emendi tal-Att
dwar Servizzi
ta' Investment.
Kap. 370.

10. Din it-Taqsima temenda u għandha tinqara u tinftiehem haġa waħda mal-Att dwar is-Servizzi ta' Investment, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali".

Emenda tal-
artikolu 2 tal-
Att prinċipali.

11. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minnufih wara t-tifsira "awtorità regolatorja Ewropea", għandha tiżdied it-tifsira ġdida li ġejja:

" "il-BRRD" tfisser id-Direttiva 2014/59/UE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Mejju 2014 li tistabbilixxi qafas għall-irkupru u r-risolviment ta' istituzzjonijiet ta' kreditu u ditti ta' investment u li temenda d-Direttiva tal-Kunsill 82/891/KEE, u d-Direttivi 2001/24/KE, 2002/47/KE, 2004/25/KE, 2005/56/KE, 2007/36/KE, 2011/35/UE, 2012/30/UE u 2013/36/UE, u Regolamenti (UE) Nru. 1093/2010 u (UE) Nru. 648/2012, tal-Parlament Ewropew u tal-Kunsill, kif emendati minn żmien għal żmien, u tinkludi kull miżura ta' implimentazzjoni, li timplimenta standards tekniċi, standards tekniċi regolatorji, linji gwida u miżuri bħal dawk li kienu jew jistgħu jiġu maħruġa taħthom;" u

(b) fis-subartikolu (3) tiegħu, minflok il-kliem "tad-Direttiva AIFM, tas-CRD", għandhom jidhlu l-kliem "tad-Direttiva AIFM, tal-BRRD, tas-CRD,".

Emenda tal-
artikolu 12 tal-
Att prinċipali.

12. L-artikolu 12 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (k) tas-subartikolu (1) tiegħu, minflok il-kliem "tad-Direttiva AIFM, tas-CRD", għandhom jidhlu l-kliem "tad-Direttiva AIFM, tal-BRRD, tas-CRD,"; u

(b) minnufih wara s-subartikolu (2)(B) tiegħu, għandu jiżdied is-subartikolu ġdid li ġej:

"(2)(Ċ) Regolamenti magħmulin taħt dan l-artikolu jistgħu jkunu wkoll jipprovdu għall-organizzazzjoni mill-ġdid u l-istralċ ta' dawk id-ditti ta' investiment li dik l-organizzazzjoni mill-ġdid u dak l-istralċ ikunu, jew jistgħu jkunu, japplikaw kif hemm fil-BRRD."

13. Fil-paragrafu (g) tas-subartikolu (2) tal-artikolu 15 tal-Att prinċipali, minflok il-kliem "fl-implimentazzjoni tad-Direttiva AIFM, tas-CRD," għandhom jidhlu l-kliem "fl-implimentazzjoni tad-Direttiva AIFM, tal-BRRD, tas-CRD,".

Emenda tal-artikolu 15 tal-Att prinċipali.

14. Fl-artikolu 16B tal-Att prinċipali, minflok il-kliem "li jittrasponu d-Direttiva AIFM, is-CRD," għandhom jidhlu l-kliem "li jittrasponu d-Direttiva AIFM, il-BRRD, is-CRD,".

Emenda tal-artikolu 16B tal-Att prinċipali.

15. L-artikolu 17 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 17 tal-Att prinċipali.

(a) fis-subartikolu (2) tiegħu, minflok il-kliem "id-Direttiva AIFM, is-CRD," kull fejn dawn jinsabu, għandhom jidhlu l-kliem "id-Direttiva AIFM, il-BRRD, is-CRD,"; u

(b) fis-subartikolu (9) tiegħu, minflok il-kliem "l-pattijiet tas-CRD u tas-CRR, hekk kif jista' jiġi preskritt," għandhom jidhlu l-kliem "l-pattijiet tal-BRRD, tas-CRD u tas-CRR, hekk kif jista' jiġi preskritt."

16. Fl-ewwel proviso li hemm għas-subartikolu (1) tal-artikolu 26 tal-Att prinċipali, minflok il-kliem "id-Direttiva AIFM, is-CRD," għandhom jidhlu l-kliem "id-Direttiva AIFM, il-BRRD, is-CRD,".

Emenda tal-artikolu 26 tal-Att prinċipali.

TAQSIMA III

EMENDI GĦALL-ATT DWAR IL-KUMMERĊ BANKARJU

17. Din it-Taqsima temenda u għandha tinqara u tinftiehem haġa waħda mal-Att dwar il-Kummerċ Bankarju, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali".

Emendi għall-Att dwar il-Kummerċ Bankarju. Kap. 371.

18. Is-subartikolu (1) tal-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 2 tal-Att prinċipali.

(a) minnufih wara t-tifsira "awtorità regolatorja estera", għandha tiżdied it-tifsira ġdida li ġejja:

" "Awtorità Ewropea dwar ir-Risolvimenti" tfisser awtorità li tkun f'xi pajjiż jew territorju barra minn Malta li jkun fi Stat Membru jew Stat ŻEE, u li tkun teżercita xi funzjoni li tikkorrispondi għall-funzjonijiet tal-Kumitat

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dwar ir-Risolvimenti taht dan l-Att u Regolamenti dwar l-Irkupru u r-Risolviment;"

(b) minnufih wara t-tifsira ġdida "Awtorità Ewropea dwar ir-Risolvimenti" għandha tizzied it-tifsira ġdida li ġejja:

" "Awtorità ta' pajjiż terz dwar ir-Risolvimenti" tfisser awtorità li tkun qegħda f'xi pajjiż jew territorju li m'huwiex Stat Membru jew Stat ŻEE u li jkun responsabbli biex iwettaq funzjonijiet komparabbli jew ekwivalenti għal dawk tal-Kumitat dwar ir-Risolvimenti taht l-Att dwar Awtorità għas-Servizzi Finanzjarji ta' Malta u Regolamenti dwar l-Irkupru u r-Risolviment mahruġin tahtu." u

(ċ) minnufih wara t-tifsira " "bank" jew "istituzzjoni ta' kreditu" ", għandha tizzied it-tifsira ġdida li ġejja:

" "il-BRRD" tfisser id-Direttiva 2014/59/UE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Mejju 2014 li tistabbilixxi qafas għall-irkupru u r-risolviment ta' istituzzjonijiet ta' kreditu u ditti ta' investiment u li temenda d-Direttiva tal-Kunsill 82/891/KEE, u d-Direttivi 2001/24/KE, 2002/47/KE, 2004/25/KE, 2005/56/KE, 2007/36/KE, 2011/35/UE, 2012/30/UE u 2013/36/UE, u Regolamenti (UE) Nru. 1093/2010 u (UE) Nru. 648/2012, tal-Parlament Ewropew u tal-Kunsill, kif emendati minn żmien għal żmien, u tinkludi kull miżura ta' implimentazzjoni, li timplimenta standards tekniċi, standards tekniċi regolatorji, linji gwida u miżuri bħal dawk li kienu jew jistgħu jiġu mahruġa taħthom;"

Emenda tal-artikolu 3 tal-Att prinċipali.

19. Fil-paragrafu (a) tas-subartikolu (1) tal-artikolu 3 tal-Att prinċipali minflok il-kliem "jittrasponi, jimplimenta u jagħti seħħ lill-ħtiġiet tad-Direttiva dwar Ħtiġiet Kapitali; u d-Direttiva dwar Adegwatezza Kapitali" għandhom jikdhlu l-kliem "jittrasponi, jimplimenta u, jew jagħti seħħ lill-ħtiġiet tal-BRRD, tas-CRD u tas-CRR;"

Emenda tal-artikolu 17B tal-Att prinċipali.

20. L-artikolu 17B tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok in-nota marginali li hemm miegħu, għandha tidhol din li ġejja:

"Tmexxija interna u pjanijiet ta' rkupru u ta' risolviment." u

(b) minnufih wara s-subartikolu (4) tiegħu, għandu jizdied is-subartikolu ġdid li ġej:

"(5) Istituzzjoni ta' kreditu għandha tikkopera mill-qrib mal-Kumitat dwar ir-Risolvimenti taht l-Att dwar Awtorità għas-Servizzi Finanzjarji ta' Malta, u ma' kull Awtorità Ewropea dwar ir-Risolvimenti rilevanti jew Awtorità ta' pajjiż terz dwar ir-Risolvimenti rilevanti u għandha tipprovdihom kull informazzjoni meħtieġa għall-preparazzjoni u l-abbozzar ta' pjan ta' risolviment vijabbli li jstabbilixxi għazliet għar-risolviment ordnat l-istituzzjoni ta' kreditu fil-każ ta' nuqqas, kif japplika l-prinċipju ta' proporzjonalità."

Għanijiet u Raġunijiet

L-għan ta' dan l-Abbozz huwa biex jittrasponi d-disposizzjonijiet tad-Direttiva 2014/59/UE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Mejju 2014 li tistabbilixxi qafas għall-irkupru u risolviment tal-istituzzjonijiet ta' kreditu u ditti ta' investiment u li temenda d-Direttiva tal-Kunsill 82/891/KEE, u d-Direttivi 2001/24/KE, 2002/47/KE, 2004/25/KE, 2005/56/KE, 2007/36/KE, 2011/35/UE, 2012/30/UE u 2013/36/UE, u Regolamenti (UE) Nru. 1093/2010 u (UE) Nru. 648/2012, tal-Parlament Ewropew u tal-Kunsill, billi jiġi emendat l-Att dwar Awtorità għas-Servizzi Finanzjarji ta' Malta u emendi oħra konsegwenzjali għall-Att dwar Servizzi ta' Investiment u Att dwar il-Kummerċ Bankarju.

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**A Bill
entitled**

AN ACT to amend various financial services laws, to establish the Resolution Authority and the Resolution Committee and to provide for matters ancillary or incidental thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

Short title.

1. The short title of this Act is the Various Financial Services Laws (Amendment) Act, 2015.

PART I

AMENDMENTS TO THE MALTA FINANCIAL SERVICES
AUTHORITY ACT

Amendments to
the Malta
Financial
Services
Authority Act.
Cap. 330.

2. This Part amends and shall be read and construed as one with the Malta Financial Services Authority Act, hereinafter in the Part referred to as "the principal Act".

Amendment of
article 2 of the
principal Act.

3. Article 2 of the principal Act shall be amended as follows:

(a) immediately after the definition "Board of Management and Resources", there shall be added the following new definition:

" "the BRRD" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution

of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, as amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;"; and

(b) immediately after the definition "financial services", there shall be added the following new definition:

" "institution" means a credit institution or an investment firm;".

4. In sub-article (2) of article 4 of the principal Act, for the words "the European Systemic Risk Board (ESRB) and other entities", there shall be substituted the words "the European Systemic Risk Board (ESRB), the European Central Bank (ECB), the Single Resolution Board (SRB) and other entities".

Amendment of article 4 of the principal Act.

5. Immediately after article 7A of the principal Act, there shall be added the following new articles:

Addition of new articles to the principal Act.

"The Resolution Authority and the Resolution Committee.

7B. (1) The Board of Governors shall also act as the Resolution Authority, which shall be the authority appointed for the purposes of Article 3 of the BRRD.

(2) The Resolution Authority shall appoint a Resolution Committee. The composition, powers and functions of the Resolution Committee shall be governed by the provisions set out in the First Schedule and in terms of any regulations made hereunder. The Resolution Authority and the Resolution Committee shall be operationally independent and shall act independently of each other and of the Supervisory Council.

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Recovery and
Resolution
Rules.

7C. For the better carrying out and implementation of the provisions of the First Schedule and the BRRD, the Authority, through the Resolution Committee, may, from time to time, issue and publish Recovery and Resolution Rules which shall be binding on institutions and others as may be specified therein. Such Rules may lay down additional requirements and conditions in relation to the recovery and resolution of institutions, the conduct of their business, their responsibilities, and any other matters as the Resolution Committee may consider appropriate."

Renumbering of
article 20D of
the principal
Act.

6. Article 20D of the principal Act shall be renumbered as article 20E.

Addition of new
article to the
principal Act.

7. Immediately after article 20C of the principal Act, there shall be added the following new article:

"Power to make
regulations in
relation to the
Resolution
Authority and
the Resolution
Committee.

20D. (1) The Minister, acting on the advice of the Resolution Authority, may make regulations for the following purposes:

(a) to transpose, implement, and, or give effect to the requirements of the BRRD;

(b) to better implement the provisions of the First Schedule;

(c) to provide for powers and functions of the Resolution Committee;

(d) to establish and impose administrative penalties and other administrative measures on institutions or others as may be specified therein;

(2) Where regulations have been made in terms of this article, the Authority, through the Resolution Committee, may issue Recovery and Resolution Rules within the meaning of article 7C of this Act for the better carrying out of, and to better implement, the provisions of the regulations."

Amendment of
article 29 of the
principal Act.

8. In article 29 of the principal Act, for the words "of the Co-Ordination Committee, of the Supervisory Council," there shall be substituted the words "of the Co-Ordination Committee, of the Resolution Committee, of the Supervisory Council,".

9. Immediately after article 30 of the principal Act there shall be added the following new Schedule:

Addition of new Schedule to the principal Act.

"FIRST SCHEDULE

RECOVERY AND RESOLUTION

Article 7B.

Interpretation.

1. (1) In this Schedule, unless the context otherwise requires:

"the CRR" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"European resolution authority" means an authority which is situated in a country or territory outside Malta that is in a Member State or an EEA State, and which exercises any function corresponding to the functions of the Resolution Committee under this Act and the Recovery and Resolution Regulations;

"investment firm" means an investment firm as defined in point (2) of Article 4(1) of the CRR, that is subject to the initial capital requirement laid down in Article 28(2) of Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms;

"resolution" means the structuring of a credit institution or investment firm through the application of a resolution measure or measures in order to achieve one or more of the objectives referred to in paragraph 3(2);

"resolution measures" means one or more of the following:

- (a) sale of business;
- (b) bridge institutions;
- (c) asset separation; and
- (d) bail in.

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"resolution powers" means the powers conferred on the Resolution Committee in terms of the Recovery and Resolution Regulations;

"third-country resolution authority" means an authority in a country or territory that is not a Member State or EEA State which is responsible for carrying out functions comparable or equivalent to those of the Resolution Committee pursuant to this Act.

(2) Words and expressions used in this Schedule, but which are not defined herein, shall be interpreted within the meaning of the BRRD.

The Resolution Committee.

2. (1) The Resolution Committee shall ensure full and complete adherence to the requirements and obligations prescribed by regulations made under this Act, either directly or in collaboration with European and third-country resolution authorities, and may, for such purposes, exercise any of its powers under this Act and any regulations made thereunder.

(2) The Resolution Committee shall be composed of three persons, who shall be a person appointed by the Central Bank of Malta, a person appointed by the Authority, and a person appointed by the Ministry responsible for Finance, who have distinguished themselves in banking and financial related matters or have the relevant experience in financial supervision, regulation, resolution and insolvency of institutions.

(3) The appointment of such persons shall be for such term, being a period of not more than three years, as may be specified in the letter of appointment, and shall be eligible for reappointment for a maximum period of two terms or otherwise for a maximum period of six years, whichever is the higher. Such persons shall receive such remuneration as the Authority may from time to time determine.

(4) The provisions of article 6(3) to (6) of the Act shall, as far as applicable, *mutatis mutandis* apply to the eligibility, term of office, termination and resignation of the Resolution Committee.

The objectives of the Resolution Committee.

3. (1) In discharging its general functions, the Resolution Committee shall, as far as is reasonably possible, act in a way which:

(a) is compatible with the resolution objectives; and

(b) minimises the cost of resolution and avoids the destruction of value of the institution.

(2) The resolution objectives of the Resolution Committee are:

(a) safeguarding the continuity of critical functions;

(b) minimising risks to financial stability;

(c) protecting public funds by reducing reliance on extraordinary public financial support;

(d) protecting depositors, client funds and client assets.

(3) (a) The Resolution Committee shall have the power to require the full assistance and collaboration of any institution, as may be necessary to enable it to fulfil its functions under this Schedule.

(b) Any institution as may be required by the Resolution Committee to provide its assistance and collaboration in terms of subparagraph (3)(a) shall comply with such request fully, without delay and in such detail as may be required.

Functions and powers of the Resolution Committee.

4. (1) Without prejudice to any other function or power conferred to it by this Act or any other law or regulations, it shall be the function of the Resolution Committee to:

(a) review and decide upon the recommendations made to it by the Resolution Unit established in terms of this Schedule, in relation to resolution decisions;

(b) liaise and consult, on matters relating to budgets and resources, with the Authority;

(c) exchange information, where necessary, with the Authority;

(d) carry out such other functions which are assigned to it by this Act or any regulations made thereunder;

(e) apply resolution measures when an institution is failing or is likely to fail;

(f) cooperate closely with the Authority in the preparation, planning and application of resolution decisions;

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(g) cooperate with authorities, both local or overseas, in order to coordinate resolution measures to protect financial stability in all affected Member States and EEA States, and achieve the most effective outcome for the group as a whole, when a cross-border group is failing or likely to fail;

(h) cooperate with European resolution authorities and third country resolution authorities on matters relating to resolution;

(i) set up a resolution financing arrangement through mandatory contributions from institutions;

(j) communicate to the Resolution Authority its resolution decisions which necessitate implementation;

(k) implement the resolution decisions mentioned under point (j);

(l) assist the Resolution Authority on any matter falling under this Part, on which the Resolution Authority seeks assistance.

(2) In carrying out its general functions, the Resolution Committee shall:

(a) ensure that no conflict of interest may arise with the supervisory functions of the Authority;

(b) seek the approval in writing of the Minister, after informing the Resolution Authority and the Central Bank of Malta, prior to taking any decisions that may have a direct fiscal impact or which have systemic implications;

(c) notify the Minister, after having informed the Resolution Authority, of any decisions taken by it pursuant to this Act.

(3) The Resolution Committee shall have all the powers that are necessary to enable it to perform its functions under this paragraph.

(4) In addition to the powers granted to the Resolution Committee under this Act or regulations issued thereunder, the Resolution Committee shall have the power to:

(a) collect the contributions from institutions towards the resolution financing arrangements;

- (b) determine the fines and penalties payable by institutions for failure to comply with the decisions addressed to them;
 - (c) collect and recover the fines and penalties due;
 - (d) impose, publish and collect administrative penalties on any person whose conduct, in the opinion of the Resolution Committee, amounts to a breach of any of the provisions of this Act, or any regulations made or Rules issued thereunder transposing the BRRD, or if such person has failed to comply with a directive issued by the Resolution Committee under this Act, or any regulations made or Rules issued thereunder transposing the BRRD.
- (5) (a) In exercising its power under sub-paragraph (4)(d), the Resolution Committee may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty of:
- (i) up to twice the amount of the benefit derived from the breach, where that benefit can be determined;
 - (ii) in the case of a natural person, up to five million Euro (€5,000,000); or
 - (iii) in the case of a legal person, up to 10% of the total annual net turnover of the undertaking in the preceding business year including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of the CRR:

Provided that, in the case of a subsidiary of a parent undertaking, the relevant turnover shall be turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year.

- (b) Where the Resolution Committee decides to impose an administrative penalty, it shall notify the person on whom the penalty is being imposed by means of a notice in writing.
- (c) Where the person upon whom the notice referred to in point (b) is served:
 - (i) fails to pay to the Resolution Committee the amount of the administrative penalty within a period of

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thirty days from the service of the notice, and fails to appeal from the decision of the Resolution Committee to the Court of Civil Jurisdiction; or

(ii) appeals to the Court of Civil Jurisdiction and fails within a period of fifteen days from the decision of the said Court to pay the administrative penalty as confirmed or as varied by that Court;

then, in every case, the amount of the administrative penalty, as originally imposed or as reduced or increased, as the case may be, shall be due to the Resolution Committee as a civil debt, and the provisions of point (d) shall apply.

(d) A notice as is referred to in point (b), or the decision of the Court of Civil Jurisdiction, as the case may be, shall upon the service by judicial act of a copy thereof on the person indicated in the notice, constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

(6) The imposition by the Resolution Committee of an administrative penalty in terms of this article shall be without prejudice to any other consequences of the act or omission of the offender under civil or criminal law:

Provided that in all cases where the Resolution Committee imposes an administrative penalty in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

(7) The Resolution Committee shall designate an official forming part of the Resolution Unit to act as a secretary for such period of time and under such terms as the Resolution Committee shall deem appropriate.

(8) The Resolution Committee may invite any person and may require any officer of the Resolution Unit or of the Authority to attend a meeting of the Resolution Committee and to take part in the discussion.

Publication of administrative penalties.

5. (1) The Authority shall publish, on its official website and in any other media as it considers appropriate, any administrative penalty or penalties for any breaches of the provisions of the BRRD

imposed by the Resolution Committee under the provisions of this Act and of any regulations made or Rules issued thereunder. Such publications shall include information on the type and nature of the breach and the identity of the person on whom the penalty is imposed, without undue delay after that person is informed of those penalties:

Provided that in cases where an appeal has been filed by the person on whom such administrative penalty or penalties have been imposed, the Authority shall, without undue delay, also publish on its official website and in any other media as it considers appropriate, information on the status of the appeal and the outcome thereof.

(2) The Authority shall publish the penalties for any breaches of the provisions of the BRRD, imposed by the Resolution Committee under the provisions of this Act and of any regulations made or Rules issued thereunder, on an anonymous basis, in any of the following circumstances:

(a) where the penalty is imposed on a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;

(b) where publication would jeopardise the stability of financial markets or an on-going criminal investigation;

(c) where publication would cause, insofar as can be determined, disproportionate damage to the institutions, to the entities referred to in point (b), (c) or (d) of Article 1(1) of the BRRD or to the natural persons involved:

Provided that publication on an anonymous basis in any such circumstances shall be an exceptional measure which needs to be justified by a detailed report compiled by the Resolution Committee:

Provided further that where the circumstances referred to in this sub-article are likely to cease within a reasonable period of time, publication under this article may be postponed for such a period of time.

(3) Information published in terms of this article shall remain on the official website of the Authority for a period of not less than five years. Personal data shall be retained on the official website of the Authority and in any other media it considers appropriate only for the period necessary, in accordance with the provisions of Maltese legislation on data protection.

Power to recover debt.

6. The Resolution Committee may bring proceedings before the Court of Civil Jurisdiction to recover as a debt an amount of fines or penalty due to it under this Part.

Power to issue directives.

7. (1) Without prejudice to any of the powers conferred in this Act, the Resolution Committee may, whenever it deems necessary, give, by notice in writing, such directives as it may deem appropriate in the circumstances in order to carry out the functions and duties prescribed by this Act, and any regulations made or Rules issued thereunder transposing the BRRD.

(2) The power to give directives under this article shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.

(3) Any person to whom a notice is given in accordance with sub-paragraph (1) shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive.

(4) Where the Resolution Committee is satisfied that the circumstances so warrant, it may at any time make public any directive which it has issued in terms of this paragraph.

The Resolution Unit

8. (1) There shall be a Resolution Unit which shall carry out the functions assigned to it under this Act, and as may be assigned to it by the Resolution Committee.

(2) The Resolution Unit shall periodically report to the Resolution Committee on the activities and developments within its area of competence.

(3) The Resolution Unit shall be composed of the Director of the Office, and any number of employees as may be required in order to carry out its functions properly.

(4) It shall be the function of the Resolution Unit to:

(a) assess whether an institution is failing or is likely to fail, after consulting the Authority;

(b) draw up resolution plans, after consulting the Authority, on how to deal with financial stress or failure of institutions, including at group level;

(c) carry out resolvability assessment of institutions;

(d) cooperate, liaise and exchange information, as necessary, with the Units respectively responsible for supervision of credit institutions and investment firms within the Authority.

Appeal.

9. (1) A decision taken by the Resolution Committee in relation to a crisis prevention measure or in exercise of any of its powers under this Act or any other law or regulation, may be subject to an appeal by any person aggrieved by the decision.

(2) An appeal from a decision under sub-paragraph (1) shall lie with the Court of Appeal (Inferior Jurisdiction) constituted in terms of article 41(6) of the Code of Organization and Civil Procedure.

(3) An appeal to the Court of Appeal (Inferior Jurisdiction) in terms of article 41(6) of the Code of Organisation and Civil Procedure shall be submitted within twenty days from when the decision of the Resolution Committee is notified to the institution concerned.

(4) (a) The determination by the Court of Appeal (Inferior Jurisdiction) in relation to a decision taken by the Resolution Committee shall be made as expeditiously as possible.

(b) The economic assessments made by the Resolution Committee shall be used as a basis by the Court when reviewing the crisis management measures concerned:

Provided that the complex nature of those assessments shall not prevent the Court from examining whether the evidence relied on by the Resolution Committee is factually accurate, reliable and consistent, and whether that evidence contains all relevant information which should be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn therefrom.

(5) No appeal shall lie from a crisis management measure.

(6) The filing of an appeal shall not suspend the effects of the challenged decision.

(7) The decision of the Resolution Committee shall be immediately enforceable and shall give rise to a rebuttable presumption that a request for the suspension of its enforcement is not

in the public interest.

(8) Where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, other instruments of ownership, assets, rights or liabilities of an institution under resolution by virtue of the use of resolution tools or exercise of resolution powers by the Resolution Committee, the annulment of a decision of the Resolution Committee shall not affect any subsequent administrative acts or transactions concluded by the Resolution Committee which were based on the annulled decision. In that case, remedies for a wrongful decision or action by the Resolution Committee shall be limited to compensation for the loss suffered by the applicant as a result of the decision or act.

Issuing of precautionary warrant.

10. Notwithstanding any other law, no precautionary warrant or other order under any other law shall be issued by any Court or Tribunal restraining the Resolution Committee from taking any action, including a crisis prevention measure or a crisis management measure, under this Act, or under any regulations issued thereunder or any other law."

PART II

AMENDMENTS TO THE INVESTMENT SERVICES ACT

Amendments to
the Investment
Services Act.
Cap. 370.

10. This Part amends and shall be read and construed as one with the Investment Services Act, hereinafter in this Part referred to as "the principal Act".

Amendment of
article 2 of the
principal Act.

11. Article 2 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, immediately after the definition "AIFM Directive", there shall be added the following new definition:

" "the BRRD" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, as amended from time to time, and includes any implementing measures, implementing technical standards, regulatory

technical standards, guidelines and similar measures that have been or may be issued thereunder"; and

(b) in sub-article (3) thereof, for the words "the AIFM Directive, the CRD,", there shall be substituted the words "the AIFM Directive, the BRRD, the CRD,".

12. Article 12 of the principal Act shall be amended as follows: Amendment of article 12 of the principal Act.

(a) in paragraph (k) of sub-article (1) thereof, for the words "the AIFM Directive, the CRD,", there shall be substituted the words "the AIFM Directive, the BRRD, the CRD,"; and

(b) immediately after sub-article (2)(B) thereof, there shall be added the following new sub-article:

"(2)(C) Regulations made under this article may also make provision for the re-organisation and winding-up of those investment firms to which such re-organisation and winding-up is, or may be rendered, applicable in terms of the BRRD."

13. In paragraph (g) of sub-article (2) of article 15 of the principal Act, for the words "implementation of the AIFM Directive, the CRD,", there shall be substituted the words "implementation of the AIFM Directive, the BRRD, the CRD,". Amendment of article 15 of the principal Act.

14. In article 16B of the principal Act, for the words "which transpose the AIFM Directive, the CRD,", there shall be substituted the words "which transpose the AIFM Directive, the BRRD, the CRD,". Amendment of article 16B of the principal Act.

15. Article 17 of the principal Act shall be amended as follows: Amendment of article 17 of the principal Act.

(a) in sub-article (2) thereof, for the words "the AIFM Directive, the CRD,", wherever they appear, there shall be substituted the words "the AIFM Directive, the BRRD, the CRD,"; and

(b) in sub-article (9) thereof, for the words "terms of the CRD and the CRR, as may be prescribed.", there shall be substituted the words "terms of the BRRD, the CRD and the CRR, as may be prescribed."

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Amendment of article 26 of the principal Act.

16. In the first proviso to sub-article (1) of article 26 of the principal Act, for the words "the AIFM Directive, the CRD,", there shall be substituted the words "the AIFM Directive, the BRRD, the CRD,".

PART III

AMENDMENTS TO THE BANKING ACT

Amendments to the Banking Act. Cap. 371.

17. This Part amends and shall be read and construed as one with the Banking Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 2 of the principal Act.

18. Sub-article (1) of article 2 of the principal Act shall be amended as follows:

(a) immediately after the definition "branch", there shall be added the following new definition:

" "the BRRD" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, as amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;"

(b) immediately after the definition "ESRB", there shall be added the following new definition:

" "European Resolution Authority" means an authority which is situated in a country or territory outside Malta that is in a Member State or an EEA State and which exercises any function corresponding to the functions of the Resolution Committee under the Malta Financial Services Authority Act and the Recovery and Resolution Regulations issued thereunder;" and

(c) immediately after the definition "third country" there shall be added the following new definition:

" "third country resolution authority" means an

authority which is in a country or territory that is not a Member State and is responsible for carrying out functions comparable or equivalent to those of the Resolution Committee under the Malta Financial Services Authority Act and the Recovery and Resolution Regulations issued thereunder."

19. Paragraph (a) of sub-article (1) of article 3 of the principal Act shall be substituted by the following: Amendment of article 3 of the principal Act.

"(a) transpose, implement and, or give effect to the requirements of the BRRD, the CRD and the CRR;"

20. Article 17B of the principal Act shall be amended as follows: Amendment of article 17B of the principal Act.

(a) for the marginal note thereof, there shall be substituted the following:

"Internal governance and recovery and resolution plans."; and

(b) immediately after sub-article (4) thereof, there shall be added the following new sub-article:

"(5) A credit institution shall cooperate closely with the Resolution Committee established under the Malta Financial Services Authority Act, and with any relevant European resolution authorities or third-country resolution authorities and shall provide them with all information necessary for the preparation and drafting of a viable resolution plan setting out options for the orderly resolution of the credit institution in the case of failure, in accordance with the principle of proportionality."

Objects and Reasons

The object of this Bill is to transpose the provisions of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, by amending the MFSA Act and other consequential amendments to the Investment Services Act and the Banking Act.

