

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,732, 24 ta' Frar, 2017

Taqsimha C

Nru. 194

24. 02. 2017

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Joe Mizzi, M.P., Ministru għat-Trasport u l-Infrastruttura, f'isem il-Ministru għall-Finanzi, u moqri għall-Ewwel darba fis-Seduta tal-20 ta' Frar, 2017.

A BILL introduced by the Honourable Joe Mizzi, M.P., Minister for Transport and Infrastructure, on behalf of the Minister for Finance, and read the First time at the Sitting of the 20th February, 2017.

ATT biex jemenda l-Att dwar il-Kummerċ Bankarju, Kap. 371, u biex jipprovdi għal hwejjeg ancillari jew incidental għal dan.

AN Act to amend the Banking Act, Cap. 371, 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' LIĠI msejjah

ATT biex jemenda l-Att dwar il-Kummerċ Bankarju, Kap. 371, u biex jipprovi għal hwejjeg ancillari jew incidental għal dan.

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

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2017 li jemenda l-Att dwar il-Kummerċ Bankarju, u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar il-Kummerċ Bankarju, hawnhekk iżjed 'il quddiem imsejjaħ "l-Att prinċipali". Titolu fil-qosor.
Kap. 371.
2. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej: Emenda tal-artikolu 2 tal-Att prinċipali.
 - (a) minnufih wara t-tifsira "banek ċentrali tal-ESCB", għandha tiżdied it-tifsira ġdida li ġejja:

" "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-rizoluzzjoni ta' istituzzjonijiet ta' kreditu u ditti ta' investment u li temenda d-Direttivi tal-Kunsill 82/891/KEE, u d-Direttivi 2001/24/KE, 2002/47/KE, 2004/25/KE, 2005/56/KE, 2007/36/KE u 2011/35/UE, 2012/30/UE u 2013/36/UE u r-Regolamenti (UE) Nru 1093/2010 u (UE) Nru 648/2012, kif emendata minn żmien għal żmien u tinkludi waħda jew aktar miżuri li jimplementaw, *standards* tekniċi li jimplementaw, *standards* tekniċi regulatorji li

jimplimentaw, linji gwida u miżuri simili li ġew maħruġa jew jistgħu jiġu maħruġa taħtha;"

(b) minnufih wara t-tifsira "CRR", għandha tiżdied it-tifsira ġdida li ġejja:

L.S. 371.09 " "depożiti eliġibbli" tfisser depożiti li ma jkunux esklużi mill-protezzjoni skont ir-regolament 9 tar-Regolamenti dwar Skema ta' Kumpens lid-Depożitant, u tinkludi depożiti miżmuma f'kont li jkunu intitolati għal kumpens kif hemm fir-regolament 12(5) tar-Regolamenti dwar Skema ta' Kumpens lid-Depożitant;"

(ċ) minnufih wara t-tifsira ġdida "depożiti eliġibbli", għandha tiżdied it-tifsira ġdida li ġejja:

L.S. 371.09 " "depożiti koperti" tfisser depożiti koperti kif imfissra fir-regolament 2 tar-Regolamenti dwar Skema ta' Kumpens lid-Depożitant;"

(d) minnufih wara t-tifsira "rikostruzzjoni", għandha tiżdied it-tifsira ġdida li ġejja:

L.S. 371.09 " "Skema" tfisser l-Iskema ta' Kumpens lid-Depożitant stabbilita taħt ir-regolament 4 tar-Regolamenti dwar Skema ta' Kumpens lid-Depożitant;"

(e) minnufih wara t-tifsira "strument finanzjarju", għandha tiżdied it-tifsira ġdida li ġejja:

" "strumenti addizzjonali tal-Grad 1" tfisser strumenti kapitali li jissodisfaw il-kondizzjonijiet stipulati fl-Artikolu 52(1) tal-CRR;"

(f) minnufih wara t-tifsira ġdida "strumenti addizzjonali tal-Grad 1", għandha tiżdied it-tifsira ġdida li ġejja:

" "strumenti tal-Grad 1 ta' Ekwità Komuni" tfisser strumenti kapitali li jissodisfaw il-kondizzjonijiet stipulati fl-Artikolu 28(1) sa (4), fl-Artikolu 29(1) sa (5) jew fl-Artikolu 31(1) tal-CRR;" u

(g) minnufih wara t-tifsira ġdida "strumenti tal-Grad 1 ta' Ekwità Komuni", għandha tiżdied it-tifsira ġdida li ġejja:

" "strumenti tal-Grad 2" tfisser strumenti kapitali jew dejn subordinat li jissodisfaw il-kondizzjonijiet stipulati fl-Artikolu 63 tal-CRR;".

3. Minnufih wara l-artikolu 29 tal-Att prinċipali, għandu jizdied l-artikolu ġdid li ġej:

Żieda ta' artikolu ġdid mal-Att prinċipali.

"Klassifikazzjoni ta' kredituri f'kazijiet ta' insolvenza jew stralċjar ta' istituzzjoni ta' kreditu.

29A. (1) Meta istituzzjoni finanzjarja tkun insolventi u tkun qed tiġi stralċjata, il-kredituri li jkollhom id-drittijiet tagħhom garantiti permezz ta' xi rahan, privileġġ, kemm jekk jirriżulta minn reġistrazzjoni kif ukoll jekk mogħti mil-liġi, jew ipoteki għandhom jikklassifikaw skont il-liġijiet applikabbli fis-sehħ f'Malta f'dak iż-żmien.

(2) Mingħajr preġudizzju għad-dispożizzjonijiet tas-subartikolu (1), dawn li ġejjin għandhom jikklassifikaw qabel il-kredituri elenkati fis-subartikolu (3):

(a) depożiti koperti;

(b) l-Iskema:

(i) surrogati għad-drittijiet u l-obbligazzjonijiet ta' depożituri koperti f'insolvenza;

(ii) fir-rigward ta' kontribuzzjoni/jiet li huma dovuti lilha mill-istituzzjoni ta' kreditu skont ir-Regolamenti dwar Skema ta' Kumpens lid-Depożitant:

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Izda minkejja kull dispożizzjoni kuntrarja li tinsab fil-liġi applikabbli ta' Malta, depożiti koperti msemmija fil-paragrafu (a), is-surroga għad-drittijiet u l-obbligazzjonijiet ta' depożituri koperti msemmija fil-paragrafu (b)(i) u l-kontribuzzjoni/jiet dovuta/i lill-Iskema msemmija fil-paragrafu (b)(ii) għandhom jikklassifikaw *pari passu*.

(3) Mingħajr preġudizzju għad-dispożizzjonijiet tas-subartikoli (1) u (2), dawn li ġejjin għandhom jikklassifikaw b'mod ugwali bejniethom iżda qabel il-klassifikazzjoni prevista għal pretensjonijiet ta' kredituri ordinarji, mhux preferuti u mhux assicurati:

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(a) dik il-parti ta' depożiti eligibbli miżmuma minn persuni fiżiċi u impriżi mikro, żgħar u ta' daqs medju oġġla mil-livell ta' kopertura previsti fir-regolamentt 10 tar-Regolamenti dwar Skema ta' Kumpens lid-Depożitant;

(b) depożiti minn persuni fiżiċi u minn impriżi mikro, żgħar u ta' daqs medju li jkunu depożiti eligibbli kieku mhux għall-fatt li jkunu saru f'fergħat barra mill-Unjoni ta' istituzzjonijiet stabbiliti fi hdan l-Unjoni.

(4) Dawn li ġejjin għandhom jiġu klassifikati wara l-kredituri l-oħra kollha li jkunu kredituri ordinarji, mhux preferuti u mhux assigurati u għandhom ikollhom l-ordni ta' prijorità li ġejja:

(a) l-ammont ta' dejn subordinat li mhuwiex kapital tal-Grad Addizzjonali 1 jew 2;

(b) strumenti tal-Grad 2;

(c) strumenti addizzjonali tal-Grad 1;

(d) strumenti tal-Grad 1 ta' Ekwità Komuni."

Għanijiet u Raġunijiet

L-għan ta' dan l-Abbozz ta' Liġi hu sabiex jittrasponi l-Artikolu 108 tad-Direttiva 2014/59/UE tal-Parlament Ewropew u tal-Kunsill li tistabbilixxi qafas għall-irkupru u r-risoluzzjoni ta' istituzzjonijiet ta' kreditu u ditti ta' investiment u li temenda d-Direttiva tal-Kunsill 82/891/KE 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 r-Regolamenti (UE) Nru 1093/2010 u (UE) Nru 648/2012, tal-Parlament Ewropew u tal-Kunsill, kif ukoll biex jipprovdi għal hwejjeġ ancillari jew inċidentali għal dan.

**A BILL
entitled**

An Act to amend the Banking Act, Cap. 371, 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:-

1. The short title of this Act is the Banking (Amendment) Act, 2017, and this Act shall be read and construed as one with the Banking Act, hereinafter referred to as "the principal Act".

Short title.
Cap. 371.
2. Article 2 of the principal Act shall be amended as follows:

Amendment of
article 2 of the
principal Act.

 - (a) before the definition "bank", there shall be added the following new definition:

" "Additional Tier 1 instruments" means capital instruments that meet the conditions laid down in Article 52(1) of the CRR;"
 - (b) immediately after the definition "Banking Rule", there shall be added the following new definition:

" "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, 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;"

(c) immediately after the definition "close links", there shall be added the following new definition:

" "Common Equity Tier 1 instruments" means capital instruments that meet the conditions laid down in Article 28(1) to (4), Article 29(1) to (5) or Article 31(1) of the CRR;"

(d) immediately after the definition "court", there shall be added the following new definition:

" "covered deposits" means covered deposits as defined in regulation 2 of the
S.L. 371.09 Depositor Compensation Scheme Regulations;"

(e) immediately after the definition "director", there shall be added the following new definition:

" "eligible deposits" means deposits that
S.L. 371.09 are not excluded from protection pursuant to regulation 9 of the Depositor Compensation Scheme Regulations, and includes deposits held in an account entitled to compensate pursuant to regulation 12(5) Depositor Compensation Scheme Regulations;"

(f) immediately after the definition "representative office", there shall be added the following new definition:

" "Scheme" means the Depositor
S.L. 371.09 Compensation Scheme established under regulation 4 of the Depositor Compensation Scheme Regulations;" and

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

" "Tier 2 instruments" means capital instruments or

subordinated loans that meet the conditions laid down in Article 63 of the CRR;".

3. Immediately after article 29 of the principal Act, there shall be added the following new article:

Addition of new article to the principal Act.

"Ranking of creditors in case of insolvency or winding up of a credit institution.

29A. (1) When a credit institution is insolvent and is being wound up, creditors having their rights secured by pledges, privileges whether resulting from registration or granted by law, or hypothecs shall rank in accordance with the applicable laws in force in Malta at the time.

(2) Without prejudice to the provisions of sub-article (1), the following shall rank before the creditors listed under sub-article (3):

(a) covered deposits;

(b) the Scheme:

(i) subrogating to the rights and obligations of covered depositors in insolvency;

(ii) in relation to contribution/s that are due to it by the credit institution under the Depositor Compensation Scheme Regulations:

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Provided that notwithstanding any provision to the contrary in the applicable Maltese Law, covered deposits mentioned in paragraph (a), the subrogation into the rights and obligations of covered depositors mentioned in paragraph (b)(i) and the contribution/s due to the Scheme mentioned in paragraph (b)(ii) shall rank *pari passu*.

(3) Without prejudice to the provisions of sub-articles (1) and (2), the following shall rank equally between themselves but before the ranking provided for the claims of ordinary unsecured, non-preferred creditors:

(a) that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level provided for in regulation 10 of the Depositor Compensation Scheme Regulations;

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(b) deposits that would be eligible deposits from natural persons, micro, small and medium-sized enterprises were they not made through branches located outside the European Union of institutions established within the European Union.

(4) The following shall rank below all other ordinary unsecured, non-preferred creditors and shall have the following order of priority:

- (a) the amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital;
- (b) Tier 2 instruments;
- (c) Additional Tier 1 instruments;
- (d) Common Equity Tier 1 instruments."

Objects and Reasons

The object of this Bill is to transpose Article 108 of Directive 2014/59/EU of the European Parliament and of the Council 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 Banking Act, and also to provide for matters ancillary or incidental thereto.

