

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 20,037, 10 ta' Awwissu, 2018
Taqsim C

Nru. 49

10. 08. 2018

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Silvio Schembri, M.P., Segretarju Parlamentari għas-Servizzi Finanzjarji, Ekonomija Digitali u Innovazzjoni, u moqri għall-Ewwel darba fis-Seduta tal-4 ta' Lulju, 2018.

A BILL introduced by the Honourable Silvio Schembri, M.P., Parliamentary Secretary for Financial Services, Digital Economy and Innovation, and read the First time at the Sitting of the 4th July, 2018.

ATT biex jemenda l-Att dwar Awtorità għas-Servizzi Finanzjarji ta' Malta, Kap. 330.

AN ACT to amend the Malta Financial Services Authority Act, Cap. 330.

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 Awtorità għas-Servizzi Finanzjarji ta' Malta, Kap. 330.

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

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2018 li jemenda l-Att dwar Awtorità għas-Servizzi Finanzjarji ta' Malta (Emenda Nru 2), u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor.

Kap. 330.

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

Emenda tal-artikolu 2 tal-Att prinċipali.

(a) it-tifsira "Bord tal-Amministrazzjoni u Riżorsi" għandha tiġi mhassra;

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

"Direttorat" tfisser sezzjoni tal-Awtorità, imwaqqfa mill-Bord tal-Gvernaturi bl-artikolu 5, magħmula minn numru ta' taqsimiet u funzjonijiet;

(ċ) it-tifsira "Direttur Ġenerali" għandha tiġi mhassra;

(d) minnufih wara t-tifsira "istituzzjoni" għandha

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tizdied it-tifsira ġdida li ġejja:

"Konsulent Ġenerali" tfisser l-Uffiċjal li jmexxi d-Direttorat responsabbli għall-affarijiet legali u relazzjonijiet internazzjonali;;

(e) minnufih wara t-tifsira "Konsulent Ġenerali" għandha tizdied it-tifsira ġdida li ġejja:

"Kumitat Eżekuttiv" tfisser il-Kumitat mahtur bl-artikolu 9;

(f) it-tifsira "Kumitat ta' Kordinazzjoni" għandha tiġi mhassra;

(g) it-tifsira "Kunsill ta' Sorveljanza" għandha tiġi mhassra;

(h) it-tifsira "Reġistratur tal-Kumpanniji" għandha tiġi mhassra;

(i) minnufih wara t-tifsira "servizzi finanzjarji" għandha tizdied it-tifsira ġdida li ġejja:

"Uffiċjal Ewlieni" tfisser l-uffiċjal responsabbli għal Direttorat;; u

(j) it-tifsira "l-Uffiċjal Prinċipali tal-Operat" għandha tiġi mhassra.

Emenda tal-artikolu 4 tal-Att prinċipali.

3. Fil-paragrafu (b) tas-subartikolu (1) tal-artikolu 4 tal-Att prinċipali, minflok il-kliem "li tippromwovi l-interessi ġenerali" għandhom jidhlu l-kliem "li tippromwovi stabbiltà finanzjarja, integrità tas-swieq finanzjarji u l-interessi ġenerali".

Emenda tal-artikolu 5 tal-Att prinċipali.

4. Fis-subartikolu (1) tal-artikolu 5 tal-Att prinċipali, minflok il-kliem "il-Kumitat ta' Kordinazzjoni, il-Kunsill ta' Sorveljanza, il-Bord tal-Amministrazzjoni u Riżorsi u l-Uffiċċju Legali" għandhom jidhlu l-kliem "il-Kumitat Eżekuttiv u Direttorati li jistgħu jiġu stabbiliti mill-Bord tal-Gvernaturi minn żmien għal żmien".

Thassir tal-artikolu 7A tal-Att prinċipali.

5. L-artikolu 7A tal-Att prinċipali għandu jiġi mhassar.

Emenda tal-artikolu 7B tal-Att prinċipali.

6. Fis-subartikolu (2) tal-artikolu 7B tal-Att prinċipali, minflok il-kliem "Kunsill ta' Sorveljanza" għandhom jidhlu l-kliem "Kumitat Eżekuttiv".

7. L-artikolu 9 tal-Att prinċipali għandu jiġi sostitwit b'dan li

għej:

Sostituzzjoni tal-artikolu 9 tal-Att prinċipali.

"Il-Kumitat Eżekuttiv.

9. (1) Il-Kumitat Eżekuttiv ikun responsabbli għall-implimentazzjoni tal-istrategiji u l-politika tal-Awtorità, għall-approvazzjoni tar-regolamentazzjoni, għall-approvazzjoni u l-ħruġ ta' liċenzi u awtorizzazzjonijiet oħra, u biex jissorvelja u jwettaq monitoraġġ fuq persuni u entitajiet oħra liċenzjati jew awtorizzati mill-Awtorità fis-settur tas-servizzi finanzjarji, għall-infurzar tal-qafas regolatorju tas-settur tas-servizzi finanzjarji, għall-amministrazzjoni ta' kuljum u għall-finanzi tal-Awtorità, inklużi riżorsi umani u servizzi anċillarji, u għall-kordinazzjoni generali tal-affarijiet amministrattivi tal-Awtorità.

(2) Il-Kumitat Eżekuttiv jista' jiddelega bil-miktub kull funzjoni u setgħa li jkollu, inkluża s-setgħa li jiddeciedi f'isem il-Kumitat, fuq tali affarijiet u bla ħsara għal dawk il-kondizzjonijiet u modi hekk kif jiġu speċifikati fid-delega, lill-Uffiċjal Eżekuttiv Ewlieni jew lil wieħed jew iżjed mill-membri tal-Kumitat jew lil taqsima tal-Awtorità, hekk kif jiġu speċifikati.

(3) Il-Kumitat Eżekuttiv ikun ukoll responsabbli sabiex jistabbilixxi u jagħti setgħat lil sotto-kumitati, taqsimiet u funzjonijiet. Il-Kumitat Eżekuttiv jiddetermina l-mandati rispettivi tas-sotto-kumitati, taqsimiet u funzjonijiet.

(4) Il-Kumitat Eżekuttiv ikun magħmul mill-Uffiċjal Eżekuttiv Ewlieni li għandu jippresjedi l-kumitat, il-Konsulent Ġenerali, u l-Uffiċjali Ewlenin rispettivament responsabbli għas-superviżjoni, infurzar, servizzi korporattivi, strategija, politika u innovazzjoni, u għal kwalunkwe aspekt li jaqa' fil-mandat tal-Awtorità hekk kif determinat mill-Bord tal-Gvernaturi.

(5) Il-Kumitat Eżekuttiv għandu jagħzel wieħed mill-uffiċjali tal-Awtorità ingaġġat f'xi waħda mill-funzjonijiet imsemmija fis-subartikolu (1), biex jagħmilha ta' Segretarju tal-Kumitat Eżekuttiv għal dak il-perjodu u taħt dawk il-kundizzjonijiet li l-Kumitat Eżekuttiv jidhirlu xierqa.

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(6) Is-Segretarju jkollu d-dmir li jagħmel it-thejjijiet meħtieġa għal-laqgħat tal-Bord u li jżomm il-minuti ta' dawk il-laqgħat.

(7) Id-dispożizzjonijiet tal-artikolu 7 għandhom, sa fejn huma applikabbli, japplikaw għall-Kumitat Eżekuttiv kif japplikaw għall-Bord tal-Gvernaturi.

(8) Il-Kumitat Eżekuttiv jista' minn żmien għal żmien jagħmel arrangamenti interni sabiex jawtorizza lil xi wieħed jew aktar mill-uffiċjali anzjani, responsabbli għall-approvazzjoni u l-ħruġ ta' liċenzi u awtorizzazzjonijiet oħra, sabiex jiffirmaw liċenza, kategoriji ta' liċenzi jew kull forma oħra ta' awtorizzazzjoni kif iqis xieraq."

Sostituzzjoni tal-artikolu 10 tal-Att prinċipali.

8. L-artikolu 10 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"Il-Kumitat Eżekuttiv meta jkun qed jagħmilha ta' Awtorità dwar l-Elenku. Kap. 345.

10. (1) Il-Kumitat Eżekuttiv għandu wkoll jagħmilha ta' Awtorità dwar l-Elenku mwaqqfa taħt l-Att dwar is-Swieq Finanzjarji u għandu jwettaq il-funzjonijiet stipulati fit-Taqsima III tal-imsemmi Att dwar is-Swieq Finanzjarji.

(2) Il-Kumitat Eżekuttiv meta jkun qed jagħmilha ta' Awtorità dwar l-Elenku jista' jiddelega bil-miktub kull funzjoni u setgħa li jkollu, inluża s-setgħa li jiddeċiedi f'isem il-Kumitat, fuq dawk l-affarijiet u bla ħsara għal dawk il-kondizzjonijiet u modi hekk kif jiġu speċifikati fid-delega, lill-Uffiċjal Eżekuttiv Ewlieni jew lil wieħed jew iżjed mill-membri tal-Kumitat jew lil taqsima tal-Awtorità, hekk kif jiġu speċifikati. Kull deċiżjoni li tittieħed b'dan il-mod għandha tiġi ratifikata mill-membri l-oħra tal-Bord mal-ewwel opportunità li jkollhom.

(3) Meta l-Kumitat Eżekuttiv jagħmilha ta' Awtorità dwar l-Elenku, dan jista' jiddelega bil-miktub kull deċiżjoni li jieħu dwar l-ammissibilità fl-elenkar lill-funzjoni jew taqsima responsabbli għat-titoli u s-swieq. Kull delega bħal dik għandha ssir bla ħsara għal dawk il-pattijiet, kundizzjonijiet u restrizzjonijiet li l-Kumitat Eżekuttiv jista' jidhirlu xierqa."

- 9.** L-artikolu 11 tal-Att prinċipali għandu jiġi mħassar. Thassir tal-artikolu 11 tal-Att prinċipali.
- 10.** L-artikolu 12 tal-Att prinċipali għandu jiġi mħassar. Thassir tal-artikolu 12 tal-Att prinċipali.
- 11.** Fis-subartikolu (3) tal-artikolu 12A tal-Att prinċipali, minflok il-kliem "lid-Direttur Ġenerali u lill-Uffiċjal Prinċipali tal-Operat" għandhom jidhlu l-kliem "lill-Uffiċjal Eżekuttiv Ewlieni". Emenda tal-artikolu 12A tal-Att prinċipali.
- 12.** Is-subartikolu (1) tal-artikolu 13 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej: Emenda tal-artikolu 13 tal-Att prinċipali.
- "(1) L-Awtorità tista' taħtar Konsulent Ġenerali, Uffiċjali Ewlenin, Diretturi, Deputati Diretturi, Kapijiet ta' Funzjonijiet, u uffiċjali bħal dawk oħra li jidhirlha li jkunu meħtieġa biex twettaq il-funzjonijiet, is-setgħat u d-dmirijiet tagħha taħt dan l-Att jew taħt xi liġi oħra. Il-hatra tal-Konsulent Ġenerali u l-Uffiċjali Ewlenin għandha ssir mill-Uffiċjal Eżekuttiv Ewlieni b'konsultazzjoni mal-Bord tal-Gvernaturi. Il-hatra tal-uffiċjali u impjegati oħra tal-Awtorità barra l-Konsulent Ġenerali u l-Uffiċjali Ewlenin għandha ssir mill-Kumitat Eżekuttiv taħt dawk il-pattijiet u l-kondizzjonijiet li l-Bord tal-Gvernaturi jista' jistabbilixxi."
- 13.** L-artikolu 23 tal-Att prinċipali għandu jiġi emendat kif ġej: Emenda tal-artikolu 23 tal-Att prinċipali.
- (a) fis-subartikolu (1) tiegħu, minflok il-kliem "Kumitat ta' Kordinazzjoni" għandhom jidhlu l-kliem "Kumitat Eżekuttiv";
- (b) fis-subartikolu (4) tiegħu, minflok il-kliem "Kumitat ta' Kordinazzjoni" għandhom jidhlu l-kliem "Kumitat Eżekuttiv".
- 14.** Fl-artikolu 29 tal-Att prinċipali, minflok il-kliem "tal-Kumitat ta' Kordinazzjoni, tal-Kumitat ta' Riżoluzzjoni, tal-Kunsill ta' Sorveljanza, tal-Bord tal-Amministrazzjoni u r-Riżorsi u tal-Uffiċċju Legali" għandhom jidhlu l-kliem "tal-Kumitat Eżekuttiv u tal-Kumitat ta' Riżoluzzjoni". Emenda tal-artikolu 29 tal-Att prinċipali.
- 15.** Minnufih wara l-artikolu 30 tal-Att prinċipali għandu jiżdied l-artikolu ġdid li ġej: Żjieda ta' artikolu ġdid mal-Att prinċipali.

"Dispożizzjonijiet transitorji u kif jinftiehm referenzi.

31. (1) Kwalunkwe deċiżjoni li ttiehdet mill-Kumitat ta' Kordinazzjoni, mill-Kunsill ta' Sorveljanza u mill-Bord tal-Amministrazzjoni u r-Riżorsi, qabel id-dhul fis-seħh ta' dan l-artikolu, għandha tkompli tapplika:

Iżda għall-finijiet ta' dan l-artikolu, il-kelma "deċiżjoni" għandha, fil-każ tal-Kunsill ta' Sorveljanza, tinkludi liċenzi maħruġa, approvazzjonijiet u awtorizzazzjonijiet mogħtija, u azzjonijiet regolatorji meħuda.

(2) Kwalunkwe referenza, fi kwalunkwe liġi, għad-Direttur Ġenerali jew għall-Uffiċjal Prinċipali tal-Operat tal-Awtorità għandhom jinqraw u jinftiehm bħala referenza għall-Uffiċjal Eżekuttiv Ewlieni tal-Awtorità kif definit fl-artikolu 2.

(3) Kwalunkwe referenza, fi kwalunkwe liġi, għall-Kumitat ta' Kordinazzjoni, il-Kunsill ta' Sorveljanza jew il-Bord tal-Amministrazzjoni u r-Riżorsi għandhom jinqraw u jinftiehm bħala referenza għall-Kumitat Eżekuttiv u tinkludi referenza għal kwalunkwe sotto-kumitati, direttorati, funzjonijiet jew taqsimiet stabbiliti taħt dan l-Att, skond il-każ."

Għanijiet u Raġunijiet

L-għanijiet u r-raġunijiet ta' dan l-Abbozz ta' Liġi huma sabiex isahħu l-Awtorità għas-Servizzi Finanzjarji ta' Malta (MFSA), sabiex issir regolatur aktar effiċjenti, proattiv u dinamiku.

**A Bill
entitled**

*AN ACT to amend the Malta Financial Services Authority Act,
Cap. 330.*

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 Malta Financial Services Authority (Amendment No. 2) Act, 2018, and this Act shall be read and construed as one with the Malta Financial Services Authority Act, hereinafter referred to as "the principal Act".

Short title.

Cap. 330.

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

Amendment of article 2 of the principal Act.

(a) the definition "Board of Management and Resources" shall be deleted;

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

" "Chief Officer" means the Officer responsible for a Directorate;"

(c) the definition "Chief Operations Officer" shall be deleted;

(d) the definition "Director-General" shall be deleted;

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

" "Directorate" means a section of the Authority,

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established by the Board of Governors in terms of article 5, made up of a number of units and functions;"

(f) the definition "Co-Ordination Committee" shall be deleted;

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

" "Executive Committee" means the Committee appointed in terms of article 9;"

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

" "General Counsel" means the Officer leading the Directorate for Legal and International Relations;"

(i) the definition "Registrar of Companies" shall be deleted; and

(j) the definition "Supervisory Council" shall be deleted.

Amendment of article 4 of the principal Act.

3. In paragraph (b) of sub-article (1) of article 4 of the principal Act, for the words "to promote the general interests" there shall be substituted the words "to promote financial stability, financial market integrity and the general interests".

Amendment of article 5 of the principal Act.

4. In sub-article (1) of article 5 of the principal Act, for the words "the Co-Ordination Committee, the Supervisory Council, the Board of Management and Resources and the Legal Office" there shall be substituted the words "the Executive Committee and Directorates as may be established by the Board of Governors from time to time".

Deletion of article 7A of the principal Act.

5. Article 7A of the principal Act shall be deleted.

Amendment of article 7B of the principal Act.

6. In sub-article (2) of article 7B of the principal Act, for the words "Supervisory Council" there shall be substituted the words "Executive Committee".

Substitution of article 9 of the principal Act.

7. Article 9 of the principal Act shall be substituted by the following:

"The Executive Committee.

9. (1) The Executive Committee shall be responsible for the implementation of the strategy and policies of the Authority, for the approval of regulation, for the approval of and for the issuing of licences and other authorisations, and for the monitoring and supervision of persons and other entities licenced or authorised by the Authority in the financial services sector, for the enforcement of the regulatory framework in the financial services sector, for carrying out the day-to-day management and the finances of the Authority including human resources and ancillary services, and for the general coordination of the Authority's administrative affairs.

(2) The Executive Committee may delegate in writing any of its functions and powers, including the power to take decisions on behalf of the Committee, on such matters and subject to such conditions and modalities as may be specified in the delegation, to the Chief Executive Officer or one or more of the members of the Committee or a unit of the Authority, as may be specified.

(3) The Executive Committee shall also be responsible for establishing and empowering sub-committees, units and functions. The Executive Committee shall determine the respective remits of the sub-committees, units and functions.

(4) The Executive Committee shall consist of the Chief Executive Officer, who shall preside thereat, the General Counsel, and of each of the Chief Officers responsible respectively for supervision, enforcement, corporate services, strategy, policy and innovation, and for any other aspect falling within the remit of the Authority as may be determined by the Board of Governors.

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(5) The Executive Committee shall designate one of the officers of the Authority, engaged in any of its functions mentioned in sub-article (1), to act as Secretary to the Executive Committee for such period and under such terms as the Executive Committee shall deem appropriate.

(6) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Executive Committee and to keep minutes of those meetings.

(7) The provisions of article 7, in so far as applicable, shall apply to the meetings of the Executive Committee as they apply to the meetings of the Board of Governors.

(8) The Executive Committee may from time to time make internal arrangements to authorize one or more of the senior officers, responsible for the approval of and for the issuing of licences and other authorisations, to sign a licence, category of licences or any other form of authorisation as it may deem appropriate."

Substitution of article 10 of the principal Act.

8. Article 10 of the principal Act shall be substituted by the following:

"The Executive Committee when acting as the Listing Authority.

Cap. 345.

10. (1) The Executive Committee shall also act as the Listing Authority established under the Financial Markets Act and shall perform the functions sets out in Part III of the said Financial Markets Act.

(2) The Executive Committee when acting as the Listing Authority may delegate in writing any of its functions and powers, including the power to take decisions on behalf of the Committee, on such matters and subject to such conditions and modalities as may be specified in the delegation, to the Chief Executive Officer or one or more members of the Committee, as may be specified. Any decision so taken shall be ratified by the other members of the Committee at the first opportunity.

(3) The Executive Committee when acting as the Listing Authority may delegate in writing any of its decisions relating to the admissibility to listing to the function or unit responsible for securities and markets. Any such delegation shall be subject to such terms, conditions and restrictions as the Executive Committee may deem fit."

- 9.** Article 11 of the principal Act shall be deleted. Deletion of article 11 of the principal Act.
- 10.** Article 12 of the principal Act shall be deleted. Deletion of article 12 of the principal Act.
- 11.** In sub-article (3) of article 12A of the principal Act, for the words "the Director General and the Chief Operations Officer" there shall be substituted the words "the Chief Executive Officer". Amendment of article 12A of the principal Act.
- 12.** Sub-article (1) of article 13 of the principal Act shall be substituted by the following: Amendment of article 13 of the principal Act.
- "(1) The Authority may appoint a General Counsel, Chief Officers, Directors, Deputy Directors, Heads of Functions and such other officers and employees as it may consider necessary for the efficient discharge of its functions, powers and duties under this Act or any other law. The appointment of the General Counsel and Chief Officers shall be made by the Chief Executive Officer in consultation with the Board of Governors. The appointment of officers and other employees of the Authority other than the General Counsel and the Chief Officers shall be made by the Executive Committee on such terms and conditions as the Board of Governors may establish."
- 13.** Article 23 of the principal Act shall be amended as follows: Amendment of article 23 of the principal Act.
- (a) in sub-article (1) thereof, for the words "Co-Ordination Committee" there shall be substituted the words "Executive Committee"; and
- (b) in sub-article (4) thereof, for the words "Co-Ordination Committee" there shall be substituted the words "Executive Committee".
- 14.** In article 29 of the principal Act, for the words "of the Co-Ordination Committee, of the Resolution Committee, of the Supervisory Council, of the Board of Management and Resources and Amendment of article 29 of the principal Act.

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of the Legal Office" there shall be substituted the words "of the Executive Committee and of the Resolution Committee".

Addition of new article to the principal Act.

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

Transitory provisions and construction of references.

31. (1) Any decision taken by the Co-ordination Committee, the Supervisory Council and the Board of Management and Resources, prior to the date of entry into force of this article, shall continue to apply:

Provided that, for purposes of this article, the term "decision" shall, in the case of the Supervisory Council, include licences issued, approvals and authorisations granted, and regulatory action taken.

(2) Any reference in any law to the Director General or Chief Operations Officer of the Authority shall be read and construed as a reference to the Chief Executive Officer of the Authority as so defined in article 2.

(3) Any reference in any law to the Co-ordination Committee, the Supervisory Council, or the Board of Management and Resources shall be read and construed as a reference to the Executive Committee and shall include a reference to any sub-committees, directorates, functions or units established under this Act, as the case may require."

Objects and Reasons

The objects and reasons of this Bill are to strengthen the Malta Financial Services Authority (MFSA), to make it a more efficient, proactive and dynamic regulator.

