

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 20,066, 5 ta' Ottubru, 2018

Taqsimha C

Nru. 59

5. 10. 2018

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Chris Fearn, M.P., Deputat Prim Ministru u Ministru għas-Saħħa, f'isem is-Segretarju Parlamentari għas-Servizzi Finanzjarji, Ekonomija Diġitali u Innovazzjoni, u moqri għall-Ewwel darba fis-Seduta tal-1 ta' Ottubru, 2018.

A BILL introduced by the Honourable Chris Fearn, M.P., Deputy Prime Minister and Minister for Health, on behalf of the Parliamentary Secretary for Financial Services, Digital Economy and Innovation, and read the First time at the Sitting of the 1st October, 2018.

**ATT biex ikompli jemenda diversi liġijiet
dwar is-servizzi finanzjarji.**

**AN ACT to further amend various
financial services laws.**

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

ABBOZZ TA' LIĠI msejjah

ATT biex ikompli jemenda diversi liġijiet dwar is-servizzi finanzjarji.

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 Att tal-2018 li jemenda Titolu fil-qosor.
Diversi Liġijiet dwar is-Servizzi Finanzjarji (Emenda Nru 2).

TAQSIMA I

Emendi għall-Att dwar is-Swieq Finanzjarji

- 2.** Din it-Taqsima temenda u għandha tinqara u tinftiehem ħaġa Emendi għall-
Att dwar is-
Swieq
Finanzjarji.
Kap. 345.
waħda mal-Att dwar is-Swieq Finanzjarji, hawn iżjed 'il quddiem f'din it-Taqsima msejjah "l-Att prinċipali".

- 3.** Minnufih wara t-tifsira "immobilizzazzjoni" fl-artikolu 2 tal-Att prinċipali għandha tiżdied din it-tifsira ġdida li ġejja: Emenda tal-
artikolu 2 tal-
Att prinċipali.

" "irċevuti tad-depożiti" tfisser dawk it-titoli li huma negozjabbli fis-suq kapitali u li jirrappreżentaw sjieda tat-titoli ta' emittent mhux domiciljat filwaqt li jkunu jistgħu jiġu ammessi għal negozjar f'suq regolat u negozjati indipendentement mit-titoli tal-emittent mhux domiciljat;"

TAQSIMA II

Emendi għall-Att dwar Servizzi ta' Investiment

- 4.** Din it-Taqsima temenda u għandha tinqara u tinftiehem ħaġa Emendi għall-
Att dwar
Servizzi ta'
Investiment.
Kap. 370.
waħda mal-Att dwar Servizzi ta' Investiment, hawn iżjed 'il quddiem f'din it-Taqsima msejjah "l-Att prinċipali".

C 1708

Emenda tal-
artikolu 2 tal-
Att prinċipali.

5. Minnufih wara t-tifsira "impriza prinċipali" fl-artikolu 2 tal-Att prinċipali għandha tiżdied din it-tifsira ġdida li ġejja:

" "irċevuti tad-depożiti" tfisser dawk it-titoli li huma negozjabbli fis-suq kapitali u li jirrapprezentaw sjieda tat-titoli ta' emittent mhux domiciljat filwaqt li jkunu jistgħu jiġu ammessi għal negozjar f'suq regolat u negozjati indipendentement mit-titoli tal-emittent mhux domiciljat;"

Emenda tal-
artikolu 15 tal-
Att prinċipali.

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

(a) fis-subartikolu (1) tiegħu, il-kliem "jew skema msemija fis-subartikolu (1) tal-artikolu 13 ta' dan l-Att" għandhom jiġihassru; u

(b) minnufih wara s-subartikolu (1) tiegħu, għandhom jiżdiedu dawn il-proviso ġodda li ġejjin:

"Izda l-awtorità kompetenti tista' tagħti xi direttiva bħal dik ukoll meta detentur ta' liċenza, għal kwalunkwe raġuni, itemm milli jibqa' jkollu liċenza mogħtija kif hawn f'dan l-Att:

Izda wkoll kull direttiva mogħtija kif hawn f'dan l-artikolu għandha, kemm-il darba l-awtorità kompetenti ma tordnax xort'ohra, tibqa' tapplika ukoll meta detentur ta' liċenza, għal kwalunkwe raġuni, itemm milli jibqa' jkollu liċenza mogħtija kif hawn f'dan l-Att."

Emenda tal-
artikolu 15A tal-
Att prinċipali.

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

(a) fil-paragrafu (ċ) tas-subartikolu (1) tiegħu, minflok il-kliem, "jew parti minnu, hekk kif tista' tordna l-awtorità kompetenti;", għandhom jidhlu l-kliem, "jew parti minnu, inkluż li tittiehed kull azzjoni meħtieġa biex id-detentur ta' liċenza jiġi xjolt jew stralċjat, hekk kif tista' tordna l-awtorità kompetenti;"

(b) il-paragrafu (ċ) tas-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:

(i) minflok il-kliem, "minn xi persuna ohra, inkluża r-rappreżentanza legali u ġudizzjarja ta' dik il-persuna legali", għandhom jidhlu l-kliem, "minn xi persuna ohra, inkluż għall-fini tax-xoljiment u stralċjar tad-detentur ta' liċenza kif ukoll ir-rappreżentanza legali u ġudizzjarja ta' dik il-persuna legali"; u

(ii) minflok il-kliem, "b'eskluzjoni ta' kull persuna

oħra.", għandhom jidhlu l-kliem, "b'eskluzjoni ta' kull persuna oħra:

Iżda l-persuna kompetenti m'għandha tieħu ebda deċiżjoni għall-fini tax-xoljiment u stralċjar tad-detentur ta' liċenza kemm-il darba l-awtorità kompetenti ma toħroġx direttiva f'dak is-sens kif hemm fl-artikolu 15, u kull direttiva bħal dik jista' jkun fiha dawk l-istruzzjonijiet, htigiet u kondizzjonijiet hekk kif l-awtorità kompetenti tista' tqis li jkunu meħtieġa, inkluż dwar il-mod kif isir l-istralċjar.";

(ċ) minnufih wara s-subartikolu (2) tiegħu, għandu jizdied dan is-subartikolu li ġej:

"(2B) Mingħajr preġudizzju għas-setgħat tal-awtorità kompetenti kif hawn fis-subartikolu (1), l-awtorità kompetenti tista' wkoll tagħmel rikors fil-qorti biex il-qorti xxolji u tistralċja lid-detentur ta' liċenza meta l-awtorità kompetenti jkun jidhrilha li detentur ta' liċenza għandu jkun xjolt jew stralċjat mill-qorti għar-raġuni msemmija fl-artikolu 214(2)(b)(iii) tal-Att dwar il-Kumpanniji, u jekk il-qorti tilqa' dak ir-rikors, allura għandhom japplikaw id-dispożizzjonijiet rilevanti tal-Att dwar il-Kumpanniji dwar ix-xoljiment u l-istralċjar mill-qorti u kull dispożizzjoni oħra li tkun tapplika ta' kull liġi oħra."; u

Kap. 386.

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

"(5) Kull miżura li tiġi adottata kif hawn fis-subartikolu (1) għandha tibqa' sseħħ minkejja li d-detentur ta' liċenza itemm milli jibqa' jkollu liċenza għal kwalunkwe raġuni, kemm-il darba l-awtorità kompetenti ma tordnax xort'oħra.".

TAQSIMA III

Emendi għall-Att dwar il-Kummerċ Bankarju

8. Din it-Taqsima temenda u għandha tinqara u tinftiehem ħaġa 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.

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

Emenda tal-artikolu 2 tal-Att prinċipali.

(a) fis-subartikolu (1) tiegħu, wara t-tifsira "fergħa",

C 1710

għandha tiżdied din it-tifsira ġdida li ġejja:

L.S. 330.09. " "Fond ta' Riżoluzzjoni" tfisser l-arranġament ta' finanzjar bħala riżoluzzjoni taht ir-Regolamenti dwar Rkupru u Riżoluzzjoni"; u

(b) fis-subartikolu (3) tiegħu, minflok il-kliem "d-dispożizzjonijiet rilevanti tal-CRD u l-CRR, u għandu jiġi interpretat u applikat skont hekk.", għandhom jidhlu l-kliem, "d-dispożizzjonijiet rilevanti tal-BRRD, CRD u CRR, u għandu jiġi interpretat u applikat skont hekk."

Emenda tal-artikolu 4B tal-Att prinċipali.

10. Minnufih wara s-subartikolu (1) tal-artikolu 4B tal-Att prinċipali, għandhom jizjeddu dawn il-proviso ġodda li ġejjin:

"Izda l-awtorità kompetenti tista' tagħti kull direttiva bħal dik ukoll meta istituzzjoni ta' kreditu ittemm milli tibqa' jkollha liċenza għal kwalunkwe raġuni jew dik il-liċenza ttemm milli tibqa' fis-sehħ:

Izda wkoll kull direttiva mogħtija kif hawn f'dan l-artikolu għandha, kemm-il darba l-awtorità kompetenti ma tordnax xort'oħra, tibqa' tapplika ukoll meta istituzzjoni ta' kreditu ittemm milli tibqa' jkollha liċenza għal kwalunkwe raġuni jew dik il-liċenza ttemm milli tibqa' fis-sehħ."

Emenda tal-artikolu 29 tal-Att prinċipali.

11. L-artikolu 29 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (1) għandu jiġi emendat kif ġej:

(i) minflok il-kliem, "tista' bla ħsara għad-dispożizzjonijiet tal-artikolu 9(2) -", għandhom jidhlu l-kliem, "tista' bla ħsara għad-dispożizzjonijiet tal-artikolu 9(2) u għal kull setgħa oħra mogħtija lill-awtorità kompetenti taht dan l-Att jew taht kull liġi oħra applikabbli –";

(ii) fil-paragrafu (d) tiegħu, minflok il-kliem, "jew parti minnu, kif tordna l-awtorità kompetenti;", għandhom jidhlu l-kliem, "jew parti minnu, inkluż li tittiehed kull azzjoni meħtieġa għall-istituzzjoni ta' kreditu biex din tiġi xjolta jew stralċjata, hekk kif tista' tordna l-awtorità kompetenti";

(iii) fil-paragrafu (g) tiegħu, minflok il-kliem, "lil kull persuna kompetenti nominata skont dan is-subartikolu." għandhom jidhlu l-kliem, "lil kull persuna nominata taht dan

is-subartikolu;" u

(iv) minnufih wara l-paragrafu (g) tiegħu, għandu jiżdied dan li ġej:

Kap. 383.

"(h) tinnomina persuna biex taġixxi bħala kontrullur u, jew tiegħu kontroll ta' xi istituzzjoni ta' kreditu għall-finijiet tal-Att dwar Kumpanniji Kontrollati (Proċedura ta' Stralċ);

u wara li tkun adottat xi miżura waħda jew aktar minn dawn imsemmija hawn qabel, l-awtorità kompetenti tista' aktar minn hekk tadotta xi miżura waħda jew aktar, sew b'żjieda magħha jew minflokha.";

(b) il-paragrafu (ċ) tas-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:

(i) minflok il-kliem, "minn xi persuna oħra, inkluża r-rappreżentanza legali u ġudizzjarja tal-istituzzjoni ta' kreditu", għandhom jidhlu l-kliem, "minn xi persuna oħra, inkluż għall-fini tax-xoljiment u stralċjar tal-istituzzjoni ta' kreditu kif ukoll ir-rappreżentanza legali u ġudizzjarja tal-istituzzjoni ta' kreditu"; u

(ii) minflok il-kliem, "b'esklużjoni ta' kull persuna oħra.", għandhom jidhlu l-kliem, "b'esklużjoni ta' kull persuna oħra:

Iżda l-persuna kompetenti m'għandha tiegħu ebda deċiżjoni għall-fini tax-xoljiment u stralċjar tal-istituzzjoni ta' kreditu kemm-il darba l-awtorità kompetenti, wara li tikkonsulta lill-Bank Ċentrali, ma toħroġ direttiva għall dak il-għan kif hemm fl-artikolu 4B u kull direttiva bħal dik jista' jkun fiha dawk l-istruzzjonijiet, htigiet u kondizzjonijiet hekk kif l-awtorità kompetenti tista' tqis li jkun meħtieġa, inkluż dwar il-mod kif isir l-istralċjar." u

(ċ) minnufih wara s-subartikolu (9) tiegħu, għandhom

C 1712

jiżdiedu dawn is-subartikoli godda li ġejjin:

Kap. 386.

"(10) Mingħajr preġudizzju għas-setgħat tal-awtorità kompetenti kif hawn fis-subartikolu (1), l-awtorità kompetenti tista' wkoll tagħmel rikors fil-qorti biex il-qorti xxolji u tistralċja xi istituzzjoni ta' kreditu meta l-awtorità kompetenti jkun jidhrilha li l-istituzzjoni ta' kreditu għandha tkun xjolta jew stralċjata mill-qorti għar-raġuni msemmija fl-artikolu 214(2)(b)(iii) tal-Att dwar il-Kumpanniji, u jekk il-qorti tilqa' dak ir-rikors, allura għandhom japplikaw id-dispożizzjonijiet rilevanti tal-Att dwar il-Kumpanniji dwar ix-xoljiment u l-istralċjar mill-qorti u kull dispożizzjoni oħra li tkun tapplika ta' kull liġi oħra.

(11) Kull miżura li tiġi adottata kif hawn fis-subartikolu (1) għandha tibqa' sseħħ minkejja li istituzzjoni ta' kreditu ittemm milli tibqa' jkollha liċenza għal kwalunkwe raġuni jew dik il-liċenza ttemm milli tibqa' seħħ, kemm-il darba l-awtorità kompetenti ma tordnax xort'oħra."

Emenda tal-artikolu 29A tal-Att prinċipali.

12. L-artikolu 29A tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:

(i) fis-subparagrafu (ii) tal-paragrafu (b) tiegħu, minflok il-kliem "skont ir-Regolamenti dwar Skema ta' Kumpens lid-Depożitant:", għandhom jidhlu l-kliem, "skont ir-Regolamenti dwar Skema ta' Kumpens lid-Depożitant:";

(ii) minnufih wara l-paragrafu (b) tiegħu, għandu jiżdied dan il-paragrafu ġdid li ġej:

L.S. 330.09. "(ċ) il-Fond ta' Riżoluzzjoni fir-rigward ta' kull kontribuzzjoni jew kontribuzzjonijiet li jistgħu jkun dovuti lilha mill-istituzzjoni ta' kreditu kif hemm fid-dispożizzjonijiet tar-Regolamenti dwar Rkupru u Riżoluzzjoni:"; u

(iii) fil-proviso li hemm miegħu, minflok il-kliem "msemmija fil-paragrafu (b)(i) u l-kontribuzzjoni/jiet dovuta/i lill-Iskema msemmija fil-paragrafu (b)(ii) għandhom jikklassifikaw *pari passu*.", għandhom jidhlu l-kliem, "msemmija fil-paragrafu (b)(i), il-kontribuzzjoni jew kontribuzzjonijiet dovuti lill-Iskema msemmija fil-paragrafu

(b)(ii) u l-kontribuzzjoni jew kontribuzzjonijiet dovuti lill-Fond ta' Rizzoluzzjoni msemmi fil-paragrafu (ċ) għandhom jikklassifikaw *pari passu*.";

(b) fis-subartikolu (3) tiegħu, minflok il-kliem "prevista għal pretensjonijiet ta' kredituri ordinarji, mhux preferuti u mhux assigurati.", għandhom jidhlu l-kliem, "prevista għal pretensjonijiet ta' kredituri mhux assigurati ordinarji:";

(ċ) minnufih wara s-subartikolu (3) tiegħu, għandu jizdied dan is-subartikolu li ġejj:

"(3A) Mingħajr preġudizzju għad-dispożizzjonijiet tas-subartikoli (1), (2) u (3), il-pretensjonijiet mhux assigurati ordinarji għandu jkollhom klassifikazzjoni oġġla minn dik ta' pretensjonijiet mhux assigurati li joriginaw minn strumenti ta' debitu li jikkonformaw ma' dawn il-kondizzjonijiet li ġejjin:

(a) il-maturità kontrattwali oriġinali tal-istrumenti ta' debitu tkun għal mill-inqas sena waħda;

(b) l-istrumenti ta' debitu ma jkun fihom ebda derivattivi inkorporati u ma jkunux huma nnifishom derivattivi:

Izda strumenti ta' debitu b'imghax varjabbli derivati minn rata ta' referenza wżata ġeneralment u strumenti ta' debitu li ma jkunux denominati fil-munita domestika ta' min joħroġhom, sakemm l-ammont prinċipali, il-ħlas lura u l-imghax jiġu denominati fl-istess munita, m'għandhomx jitqiesu bħala strumenti ta' debitu li jkun fihom derivattivi inkorporati unikament minħabba f'dawk il-karatteristiċi;

(ċ) id-dokumentazzjoni kuntrattwali rilevanti u, meta jkun japplika, il-prospett li jkollu x'jaqsam mal-ħruġ ikunu jirreferu b'mod esplicitu għall-klassifikazzjoni iktar baxxa taħt dan is-subartikolu.";

(d) fis-subartikolu (4) tiegħu, minflok il-kliem "l-oħra kollha li jkunu kredituri ordinarji, mhux preferuti u mhux assigurati", għandhom jidhlu l-kliem, "l-oħra kollha li jkunu kredituri mhux assigurati"; u

(e) minnufih wara s-subartikolu (4) tiegħu għandu jizdied dan is-subartikolu li ġejj:

C 1714

"(5) Għall-għanijiet ta' dan l-artikolu:

(a) "strumenti ta' debitu" ifissru bonds u kull għamla oħra ta' debitu trasferibbli u strumenti li joħolqu jew jirrikonoxxu debitu;

(b) "derivattivi" tfisser dawk l-istrumenti finanzjarji mfissra fil-punt (44) (ċ) tal-Artikolu 4(1) tad-Direttiva 2014/65/UE; u msemmija fl-Anness I, Sezzjoni Ċ (4) sa (10) relattiv."

Għanijiet u Raġunijiet

L-għan ta' dan l-Abbozz hu sabiex jittrasponi l-Artikolu 1 tad-Direttiva 2017/2399 tal-Parlament Ewropew u tal-Kunsill li jemenda d-Direttiva 2014/59/UE dwar il-klassifikazzjoni ta' strumenti ta' debitu mhux assikurati fil-ġerarkija ta' insolvenza billi jiġi emendat l-Att dwar il-Kummerċ Bankarju, kif ukoll biex jiġi provdut dwar hwejjeġ anċillari jew inċidentali għalihom u sabiex jemenda kemm l-Att dwar il-Kummerċ Bankarju kemm l-Att dwar Servizzi ta' Investiment sabiex jiġu ċċarati aħjar għadd ta' dispożizzjonijiet dwar is-setgħat li għandha l-awtorità kompetenti. L-għan ta' dan l-Abbozz hu wkoll sabiex jittrasponi l-artikolu 4(1)(45) tad-Direttiva 2014/65/UE tal-Parlament Ewropew u tal-Kunsill dwar is-swieq fl-istrumenti finanzjarji u li temenda d-Direttiva 2002/92/KE u d-Direttiva 2011/61/UE ("MIFID II").

**A BILL
entitled**

AN ACT to further amend various financial services laws.

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 Various Financial Services Laws (Amendment No. 2) Act, 2018. Short title.

**PART I
Financial Markets Act**

2. This Part amends and shall be read and construed as one with the Financial Markets Act, hereinafter in this Part referred to as "the principal Act". Amendments to the Financial Markets Act. Cap. 345.

3. Immediately after the definition "dematerialized form" in article 2 of the principal Act there shall be added the following new definition: Amendment of article 2 of the principal Act.

" "depository receipts" means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;"

**PART II
Amendments to the Investment Services Act**

4. 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". Amendments to the Investment Services Act. Cap. 370.

C 1716

Amendment of article 2 of the principal Act.

5. Immediately after the definition "the CRR" in article 2 of the principal Act there shall be added the following new definition:

" "depository receipts" means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;"

Amendment of article 15 of the principal Act.

6. Article 15 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, the words "or scheme as is referred to in article 13(1)" shall be deleted; and

(b) immediately after sub-article (1) thereof, there shall be added the following new provisos:

"Provided that the competent authority may give any such directive even where a licence holder, for whatever reason, ceases to hold a licence granted in terms of this Act:

Provided further that any directive given in terms of this article shall, unless the competent authority otherwise directs, continue to apply even when a licence holder, for whatever reason, ceases to hold a licence granted in terms of this Act."

Amendment of article 15A of the principal Act.

7. Article 15A of the principal Act shall be amended as follows:

(a) in paragraph (c) of sub-article (1) thereof, for the words, "or part thereof, as the competent authority may direct;", there shall be substituted the words, "or part thereof, including to take the necessary action for the licence holder to be dissolved and wound up, as the competent authority may direct;"

(b) paragraph (c) of sub-article (2) thereof shall be amended as follows:

(i) for the words, "or by any other person, including the legal and judicial representation of such legal person", there shall be substituted the words, "or by any other person, including for the purpose of the dissolution and winding up of the licence holder as well as the legal and judicial representation of such legal person"; and

(ii) for the words, "to the exclusion of any other person.", there shall be substituted the words, "to the exclusion of any other person:

Provided that the competent person shall not take any decision for the purpose of the dissolution and winding up of the licence holder unless the competent authority issues a directive to that effect in terms of article 15, and any such directive may contain such instructions, requirements and conditions as the competent authority may consider necessary, including with regard to the mode of winding up.";

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

"(2A) Without prejudice to the powers of the competent authority in terms of sub-article (1), the competent authority may also make an application to the court for the dissolution and winding up by the court of a licence holder where it appears to the competent authority that a licence holder should be dissolved and wound up by the court for the reason set out in article 214(2)(b)(iii) of the Companies Act, and where the court accedes to the application the relevant provisions of the Companies Act in relation to the dissolution and winding up by the court and any other applicable provisions of any other law shall apply.";

and

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

"(5) Any measure adopted in terms of sub-article (1) shall remain in force notwithstanding that a licence holder ceases to hold a licence for whatever reason, unless the competent authority otherwise directs.".

PART III

Amendments to the Banking Act

8. 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".

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

Amendment of article 2 of the principal Act.

(a) in sub-article (1) thereof, after the definition "representative office", there shall be added the following new

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definition:

S.L. 330.09. "Resolution Fund" means the resolution financing arrangement under the Recovery and Resolution Regulations;"; and

(b) in sub-article (3) thereof, for the words "the relevant provisions of the CRD and CRR, and shall be interpreted and applied accordingly.", there shall be substituted the words, "the relevant provisions of the BRRD, the CRD and the CRR, and shall be interpreted and applied accordingly."

Amendment of article 4B of the principal Act.

10. Immediately after sub-article (1) of article 4B of the principal Act, there shall be added the following new provisos:

"Provided that the competent authority may give any such directive even where a credit institution ceases to hold a licence for whatever reason or such licence ceases to have effect:

Provided further that any directive given in terms of this article shall, unless the competent authority otherwise directs, continue to apply even when a credit institution ceases to hold a licence for whatever reason or such licence ceases to have effect."

Amendment of article 29 of the principal Act.

11. Article 29 of the principal Act shall be amended as follows:

(a) sub-article (1) shall be amended as follows:

(i) for the words, "may, without prejudice to the provisions of article 9(2) -", there shall be substituted the words, "may, without prejudice to the provisions of article 9(2) and to any other powers conferred on the competent authority under this Act or any other applicable law –";

(ii) in paragraph (d) thereof, for the words, "or part thereof, as the competent authority may direct;"; there shall be substituted the words, "or part thereof, including to take the necessary action for the credit institution to be dissolved and wound up, as the competent authority may direct;";

(iii) in paragraph (g) thereof, for the words, "to any competent person appointed under this sub-article." there shall be substituted the words, "to any person appointed under this sub-article;"; and

(iv) immediately after paragraph (g) thereof, there

shall be added the following:

Cap. 383. "(h) appoint a person to act as controller and, or to assume control of a credit institution for the purposes of the Controlled Companies (Procedure for Liquidation) Act;

and having adopted any one or more of the measures aforesaid, the competent authority may further adopt any one or more measures, whether in addition thereto or in substitution therefor.";

(b) paragraph (c) of sub-article (2) thereof shall be amended as follows:

(i) for the words, "any other person, including the legal and judicial representation of the credit institution", there shall be substituted the words, "any other person, including for the purpose of the dissolution and winding up of the credit institution as well as the legal and judicial representation of the credit institution"; and

(ii) for the words, "to the exclusion of any other person.", there shall be substituted the words, "to the exclusion of any other person:

Provided that the competent person shall not take any decision for the purpose of the dissolution and winding up of the credit institution unless the competent authority, after consulting with the Central Bank, issues a directive to that effect in terms of article 4B and any such directive may contain such instructions, requirements and conditions as the competent authority may consider necessary, including with regard to the mode of winding up."; and

(c) immediately after sub-article (9) thereof, there shall be added the following new sub-articles:

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"(10) Without prejudice to the powers of the competent authority in terms of sub-article (1), the competent authority may also make an application to the court for the dissolution and winding up by the court of a credit institution where it appears to the competent authority that a credit institution should be dissolved and wound up by the court for the reason set out in article 214(2)(b)(iii) of the Companies Act, and where the court accedes to the application the relevant provisions of the Companies Act in relation to the dissolution and winding up by the court and any other applicable provisions of any other law shall apply.

(11) Any measure adopted in terms of sub-article (1) shall remain in force notwithstanding that a credit institution ceases to hold a licence for whatever reason or such licence ceases to have effect, unless the competent authority otherwise directs."

Amendment of article 29A of the principal Act.

12. Article 29A of the principal Act shall be amended as follows:

(a) sub-article (2) thereof shall be amended as follows:

(i) in sub-paragraph (ii) of paragraph (b) thereof, for the words "under the Depositor Compensation Scheme Regulations:", there shall be substituted the words, "under the Depositor Compensation Scheme Regulations:";

(ii) immediately after paragraph (b) thereof, there shall be added the following new paragraph:

(c) the Resolution Fund in relation to any contribution or contributions that may be due to it by the credit institution in accordance with the provisions of the Recovery and Resolution Regulations:"; and

(iii) in the proviso thereof, for the words "mentioned in paragraph (b)(i) and the contribution/s due to the Scheme mentioned in paragraph (b)(ii) shall rank *pari passu*.", there shall be substituted the words, "mentioned in paragraph

(b)(i), the contribution or contributions due to the Scheme mentioned in paragraph (b)(ii) and the contribution or contributions due to the Resolution Fund mentioned in paragraph (c) shall rank *pari passu*.";

(b) in sub-article (3) thereof, for the words "provided for the claims of ordinary unsecured, non-preferred creditors:", there shall be substituted the words, "provided for the claims of ordinary unsecured creditors:";

(c) immediately after sub-article (3) thereof, there shall be added the following new sub-article:

"(3A) Without prejudice to the provisions of sub-articles (1), (2) and (3), ordinary unsecured claims shall have a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions:

(a) the original contractual maturity of the debt instruments is of at least one year;

(b) the debt instruments contain no embedded derivatives and are not derivatives themselves:

Provided that debt instruments with variable interest derived from a broadly used reference rate and debt instruments not denominated in the domestic currency of the issuer, provided that principal, repayment and interest are denominated in the same currency, shall not be considered to be debt instruments containing embedded derivatives solely because of those features;

(c) the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under this sub-article.";

(d) in sub-article (4) thereof, for the words "all other ordinary unsecured, non-preferred creditors", there shall be substituted the words, "all other unsecured creditors"; and

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

"(5) For the purposes of this article:

(a) "debt instruments" shall mean bonds and other forms of transferable debt and instruments creating or

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acknowledging a debt;

(b) "derivatives" shall mean those financial instruments defined in point (44) (c) of Article 4(1) of Directive 2014/65/EU; and referred to in Annex I, Section C (4) to (10) thereto."

Objects and Reasons

The object of this Bill is to transpose Article 1 of Directive 2017/2399 of the European Parliament and of the Council amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy by amending the Banking Act, and also to provide for matters ancillary or incidental thereto and to amend both the Banking Act and the Investment Services Act to further clarify a number of provisions regarding the powers of the competent authority. Moreover the object of this Bill is also to transpose Article 4(1)(45) of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II).

