

MALTA

**ATT Nru LXII tal-2020**

ATT maħruġ b'liġi mill-Parlament ta' Malta.

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

**ACT No. LXII of 2020**

AN ACT enacted by the Parliament of Malta.

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



Nagħti l-kunsens tiegħi.

(L.S.)

**GEORGE VELLA**  
**President**

22 ta' Diċembru, 2020

**ATT Nru LXII tal-2020**

*ATT biex jemenda l-Att dwar l-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, hareġ b'ligi dan li ġej:

**1.** It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2020 li jemenda l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta 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** Is-subartikolu (2) tal-artikolu 4 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 4 tal-Att prinċipali.

(a) il-kliem "u kulleġġi tas-supervizuri" għandhom jiġu mħassra; u

(b) il-kliem "l-Awtorità Ewropea dwar Pensjonijiet tal-Assigurazzjoni u tax-Xogħol (EIOPA), il-Bord Ewropew dwar ir-Riskju Sistematiċi (ESRB), il-Bank Ċentrali Ewropew (ECB), il-Bord ta' Riżoluzzjoni Uniku (SRB) u entitajiet oħra li

jeżerċitaw setgħat regolatorji ta' sorveljanza jew ta' liċenza" għandhom jiġu sostitwiti bil-kliem "l-Awtorità Ewropea dwar Pensjonijiet tal-Assigurazzjoni u tax-Xogħol (EIOPA), kulleġġi tas-superviżuri, il-Bord Ewropew dwar ir-Riskju Sistemiku (ESRB), il-Bank Ċentrali Ewropew (ECB), il-Bord ta' Riżoluzzjoni Uniku (SRB) u entitajiet oħra li jeżerċitaw funzjonijiet u setgħat regolatorji, ta' sorveljanza, ta' reġistrazzjoni jew ta' liċenzja".

Emenda tal-artikolu 11 tal-Att prinċipali.

3. Fis-subartikolu (4) tal-artikolu 11 tal-Att prinċipali, il-kliem "minn erba' (4) membri oħra" għandhom jiġu sostitwiti bil-kliem "minn żewġ (2) membri oħra".

Emenda tal-artikolu 17 tal-Att prinċipali.

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

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

(i) il-kliem "Mingħajr preġudizzju għad-dispożizzjonijiet" għandhom jiġu sostitwiti bil-kliem "Minkejja d-dispożizzjonijiet";

(ii) fil-paragrafu (ċ) tiegħu, il-kliem "gudizzjarja jew ta' liċenzjar" għandhom jiġu sostitwiti bil-kliem "gudizzjarja, ta' reġistrazzjoni jew ta' liċenzjar"; u

(iii) fil-proviso mal-paragrafu (ċ) tiegħu, il-kliem "kollaborazzjoni ma' awtoritajiet regolatorji oħra barranin inkluża" għandhom jiġu sostitwiti bil-kliem "kollaborazzjoni, inkluża";

(b) fis-subartikolu (3) tiegħu, il-kliem "lill-Awtorità Ewropea dwar il-Banek (EBA) u lil kulleġġi ta' superviżuri, lill-Awtorità Ewropea dwar Pensjonijiet tal-Assigurazzjoni u tax-Xogħol (EIOPA), jew lill-Bord Ewropew dwar ir-Riskju Sistemiku (ESRB)" għandhom jiġu sostitwiti bil-kliem "lill-Awtorità Ewropea dwar il-Banek (EBA), lill-Awtorità Ewropea dwar Pensjonijiet tal-Assigurazzjoni u tax-Xogħol (EIOPA), lill-kulleġġi ta' superviżuri jew lill-Bord Ewropew dwar ir-Riskju Sistemiku (ESRB)"; u

(ċ) is-subartikolu (4) tiegħu għandu jiġi emendat kif ġej:

(i) il-kliem "ma' awtoritajiet regolatorji barranin jew ma' korpi oħra" għandhom jiġu sostitwiti bil-kliem "ma' xi awtorità, korp jew entità oħra"; u

(ii) il-kliem "tal-awtorità regolatorja barranija." għandhom jiġu sostitwiti bil-kliem "ta' awtorità, korp jew

entità oħra."

5. L-artikolu 21 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 21 tal-Att prinċipali.

(a) fil-paragrafu (a) tas-subartikolu (9) tiegħu, il-kliem "dan l-Att;" għandhom jiġu sostitwiti bil-kliem "dan l-Att, jew ta' xi regolamenti maħruġin taħtu;";

(b) minnufih wara t-tieni proviso tas-subartikolu (9) tiegħu, għandu jiżdied dan is-subartikolu ġdid li ġej:

"(9A) It-Tribunal għandu jiddeċiedi wkoll jekk, għar-raġunijiet miġjuba mill-appellant:

(a) il-Kumitat ta' Riżoluzzjoni jkunx, fid-deċiżjoni tiegħu, applika hażin xi waħda mid-dispożizzjonijiet ta' dan l-Att jew ta' xi regolamenti maħruġin taħtu; jew

(b) id-deċiżjoni tal-Kumitat ta' Riżoluzzjoni tkunx tikkostitwixxi abbuż ta' diskrezzjoni jew jekk din tkunx manifestament inġusta:

Iżda, dwar appell minn deċiżjoni tal-Kumitat ta' Riżoluzzjoni li jieħu xi miżura ta' maniġġjar ta' kriżi, it-Tribunal għandu juża l-valutazzjonijiet ekonomiċi komplessi tal-fatti mwettqin mill-Kumitat ta' Riżoluzzjoni bħala bażi għall-valutazzjoni tiegħu nnifsu ta' dik id-deċiżjoni:

Iżda wkoll, ix-xorta komplessa ta' dawk il-valutazzjonijiet ekonomiċi ma għandhomx jipprevjenu lit-Tribunal milli jeżamina jekk ix-xhieda li jkun ibbaża ruħu fuqha l-Kumitat ta' Riżoluzzjoni tkunx waħda fattwalment preċiża, ta' min joqgħod fuqha u konsistenti, u jekk dik ix-xhieda tkunx tinkludi kull informazzjoni rilevanti li għandha titqies biex tkun tista' ssir il-valutazzjoni ta' sitwazzjoni kumplessa, u jekk din tkunx tista' tissostanzja l-konkluzjonijiet li joħorgu minnha.";

(c) il-paragrafu (a) tas-subartikolu (13) tiegħu għandu jiġi emendat kif ġej:

(i) il-kelma "jaqleb" għandha tiġi sostitwita bil-kelma "iħassar";

(ii) il-kliem "tal-awtorità kompetenti taħt"

għandhom jiġu sostitwiti bil-kliem "tal-awtorità kompetenti jew tal-Kumitat ta' Riżoluzzjoni taht"; u

(iii) il-kliem "lill-imsemmija awtorità kompetenti biex timplimenta" għandhom jiġu sostitwiti bil-kliem "lill-imsemmija awtorità kompetenti jew lill-Kumitat ta' Riżoluzzjoni biex jimplimentaw"; u

(d) is-subartikolu (17) tiegħu għandu jiġi emendat kif ġej:

(i) fl-ewwel proviso tiegħu, il-kliem "l-appell ikun abbandunat." għandhom jiġu sostitwiti bil-kliem "l-appell ikun abbandunat."; u

(ii) minnufih wara l-ewwel proviso għandu jiżdied dan il-proviso ġdid li ġej:

"Izda wkoll, dwar xi deċiżjoni tal-Kumitat ta' Riżoluzzjoni li jieħu xi miżura ta' maniġġjar ta' kriżi:

(a) il-preżentazzjoni ta' appell minn deċiżjoni bħal dik ma għandha tkun tinvolvi l-ebda sospensjoni awtomatika tal-effetti tad-deċiżjoni kontestata; u

(b) id-deċiżjoni tal-Kumitat ta' Riżoluzzjoni għandha tkun tista' tiġi minnufih infurzata u din għandha tagħti lok għal preżunzjoni konfutabbli li s-suspensjoni tal-infurzar tagħha tmur kontra l-interess pubbliku."

Emenda tal-Ewwel Skeda li tinsab mal-Att prinċipali.

**6.** L-Ewwel Skeda li tinsab mal-Att prinċipali għandha tiġi emendata kif ġej:

(a) is-subartikolu (2) tal-artikolu 3 tagħha għandu jiġi emendat kif ġej:

(i) fil-paragrafu (d), il-kliem "iħarsu d-depożitanti, il-fondi u l-attiv tal-klijenti." għandhom jiġu sostitwiti bil-kliem "iħarsu d-depożitanti u l-investituri."; u

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

"(e) iħarsu l-fondi tal-klijenti u l-attiv tal-klijenti.";

(b) fl-artikolu 9 tagħha:

(i) l-intestatura tiegħu għandha tiġi sostitwita b'din l-intestatura li ġejja:

"Rimedji għal deċiżjoni jew azzjoni hażina."; u

(ii) is-subartikoli (1) sa (5) tiegħu għandhom jiġu mħassra; u

(ċ) l-artikolu 12 tagħha għandu jiġi mħassar.

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Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 412 tas-16 ta' Diċembru, 2020.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Skrivan tal-Kamra tad-Deputati*

I assent.

(L.S.)

**GEORGE VELLA**  
**President**

22nd December, 2020

**ACT No. LXII of 2020**

*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:

Short title.

**1.** The short title of this Act is the Malta Financial Services Authority (Amendment) Act, 2020 and this Act shall be read and construed as one with the Malta Financial Services Authority Act, hereinafter referred to as "the principal Act".

Cap. 330.

Amendment of article 4 of the principal Act.

**2.** Sub-article (2) of article 4 of the principal Act shall be amended as follows:

(a) the words "and colleges of supervisors" shall be deleted; and

(b) the words "the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board (ESRB), the European Central Bank (ECB), the Single Resolution Board (SRB) and other entities which exercise regulatory, supervisory or licensing powers" shall be substituted by the words "the European Insurance and Occupational Pensions Authority (EIOPA), colleges of supervisors, the



European Systemic Risk Board (ESRB), the European Central Bank (ECB), the Single Resolution Board (SRB) and other entities which exercise regulatory, supervisory, registration or licensing functions and powers".

3. In sub-article (4) of article 11 of the principal Act, the words "and four (4) other members" shall be substituted by the words "and two (2) other members".

Amendment of article 11 of the principal Act.

4. Article 17 of the principal Act shall be amended as follows:

Amendment of article 17 of the principal Act.

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

(i) the words "Without prejudice to" shall be substituted by the word "Notwithstanding";

(ii) in paragraph (c) thereof, the words "judicial or licensing function" shall be substituted by the words "judicial, registration or licensing function"; and

(iii) in the proviso of paragraph (c) thereof, the words "collaboration with overseas regulatory authorities including" shall be substituted by the words "collaboration, including";

(b) in sub-article (3) thereof, the words "the European Banking Authority (EBA) and colleges of supervisors, to the European Insurance and Occupational Pensions Authority (EIOPA), or to the European Systemic Risk Board (ESRB)," shall be substituted by the words "the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), colleges of supervisors or to the European Systemic Risk Board (ESRB),"; and

(c) sub-article (4) shall be amended as follows:

(i) the words "overseas regulatory authorities or other bodies" shall be substituted by the words "any authority, body or other entity"; and

(ii) the words "the overseas regulatory authority is obtained." shall be substituted by the words "any such authority, body or other entity is obtained.".

5. Article 21 of the principal Act shall be amended as follows:

Amendment of article 21 of the principal Act.

(a) in paragraph (a) of sub-article (9) thereof, the words "this Act;" shall be substituted by the words "this Act, or any

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regulations issued thereunder;";

(b) immediately after the second proviso of sub-article (9) thereof, the following new sub-article shall be added:

"(9A) The Tribunal shall also determine whether, for the reasons adduced by the appellant:

(a) the Resolution Committee has, in its decision, wrongly applied any of the provisions of this Act or any regulations issued thereunder; or

(b) the decision of the Resolution Committee constitutes an abuse of discretion or is manifestly unfair:

Provided that, with respect to an appeal from a decision of the Resolution Committee to take a crisis management measure, the Tribunal shall use the complex economic assessments of the facts carried out by the Resolution Committee as a basis for its own assessment of that decision:

Provided further, that the complex nature of such economic assessments shall not prevent the Tribunal 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.";

(c) paragraph (a) of sub-article (13) thereof shall be amended as follows:

(i) the word "reverse" shall be substituted by the word "annul";

(ii) the words "the competent authority under" shall be substituted by the words "the competent authority or the Resolution Committee under"; and

(iii) the words "the said competent authority to implement" shall be substituted by the words "the said competent authority or the Resolution Committee to implement"; and

(d) sub-article (17) thereof shall be amended as follows:

(i) in the first proviso thereof, the words "the appeal is abandoned." shall be substituted by the words "the appeal is abandoned;"; and

(ii) immediately after the first proviso thereof, there shall be added the following new proviso:

"Provided further that, with respect to a decision of the Resolution Committee to take a crisis management measure:

(a) the lodging of an appeal from such decision shall not entail any automatic suspension of the effects of the challenged decision; and

(b) the decision of the Resolution Committee shall be immediately enforceable and it shall give rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest."

6. The First Schedule to the principal Act, shall be amended as follows:

Amendment of the First Schedule to the principal Act.

(a) sub-article (2) of article 3 thereof shall be amended as follows:

(i) in paragraph (d), the words "protecting depositors, client funds and client assets." shall be substituted by the words "protecting depositors and investors;"; and

(ii) immediately after paragraph (d) there shall be added the following new paragraph:

"(e) protecting clients' funds and clients' assets.";

(b) in article 9 thereof:

(i) the heading thereto shall be substituted by the following heading:

"Remedies for a wrongful decision or action.";  
and

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(ii) sub-articles (1) to (5) thereof shall be deleted;  
and

(c) article 12 thereof shall be deleted.

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Passed by the House of Representatives at Sitting No. 412 of the  
16th December, 2020.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*