

ABBOZZ TA' LIĠI msejjaħ

ATT biex jipprovi dwar securitisation, biex jirregola l-liġijiet eżistenti f' sostenn tas-securitisation u biex jintroduci regoli ġodda dwar il-mezzi tas-securitisation.

Il-President, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f' dan il-Parlament, u fis-seħħ bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:

TAQSIMA I

ĠENERALI

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att ta' l-2003 dwar *is-Securitisation*. Titolu fil-qosor u bidu.

(2) Dan l-Att għandu jibda jseħħ f' dik id-data li l-Ministru responsabbli għall-finanzi jista' jstabilixxi b'avviż fil-Gazzetta, u jistgħu jiġu hekk stabbiliti dati differenti għal disposizzjonijiet differenti u għal għanijiet differenti ta' dan l-Att.

2. F' dan l-Att, kemm-il darba r-rabta tal-kliem ma titlobx Tifsir. xort'ohra:-

“*assi tas-securitisation*” tfisser kull attiv, kemm jekk jeżisti kemm jekk futur, kemm jekk mobbli kemm jekk immobbli, kemm jekk tangibbli kemm jekk mhux tangibbli, u meta r-rabta tal-kliem tkun hekk tippermetti, tinkludi riskji;

“l-awtorità kompetenti” tfisser il-korp mahtur b’Ordni tal-Ministru li ghandha tiġi pubblikata fil-Gazzetta, sabiex teżerċita l-funzjonijiet ta’ l-awtorità kompetenti taht dan l-Att u twestaq dawk il-funzjonijiet l-oħra li l-Ministru jista’ jidhirlu xierqa relattivament għall-operat ta’ dan l-Att;

Kap. 249.

“kitba” ikollha l-istess tifsira bħal dik mogħtija lilha fl-Att dwar l-Interpretazzjoni, u għandha tinkludi trasmissjonijiet bil-*fax* u komunikazzjonijiet bil-posta elettronika;

“kollateral tas-sigurtà” tfisser kollateral provdut minn persuna li tipprovdi l-kollateral b’sigurtà għal, jew lil, persuna li tiehu l-kollateral, u f’każijiet meta l-proprjetà shiha tal-kollateral tibqa’ għand il-persuna li tipprovdi l-kollateral, meta jiġi stabbilit id-dritt tas-sigurtà;

“kollateral tat-trasferiment tat-titolu” tfisser kollateral provdut minn persuna li tipprovdi l-kollateral, inkluż kull ftehim ta’ xiri mill-ġdid u assenjazzjonijiet fil-forma ta’ sigurtà, li permezz tiegħu il-persuna li tipprovdi l-kollateral titrasferixxi l-proprjetà shiha tal-kollateral lill-persuna li tiehu l-kollateral sabiex tassigura jew b’mod ieħor tkopri t-twettiq ta’ kull obligazzjoni;

“kredituri tas-*securitisation*” tfisser il-kredituri jew il-klassijiet ta’ kredituri kollha ta’ mezz tas-*securitisation*, fir-rigward ta’ operazzjoni tas-*securitisation*, li l-kreditu tagħha jkun assikurat b’kull mezz li jkun, kemm jekk b’kollateral ta’ assikurazzjoni jew b’kollateral tat-trasferiment tat-titolu, inkluż, mingħajr preġudizzju għall-ġeneralità ta’ dak hawn qabel imsemmi, l-originatur, kull persuna li jkollha xi strument finanzjarju wiehed jew aktar mahruġ mill-mezz tas-*securitisation*, li ma tkunx azzjonist ta’ mezz tas-*securitisation*, jekk dan japplika, kull min isellef, *hedge counterparty*, persuna li tipprovdi l-likwidità u persuna li tipprovdi is-sostenn tal-kreditu tal-mezz tas-*securitisation* u kull *trustee* li jaġixxi għan-nom ta’ xi wiehed minnhom;

Kap. 386.

“kumpannija ta’ l-investment” tfisser kumpannija ta’ investment b’kapital fiss jew kumpannija ta’ investment b’kapital varjabbli, liema termini rispettivi għandu jkollhom l-istess tifsira bħal dik rispettivament mogħtija lilhom mill-Att dwar il-Kumpanniji;

“mezz tas-*securitisation*” tfisser mezz kif imsemmi fl-artikolu 3 u li jkun ġie stabbilit jew mahluq bil-ghan li jwestaq direttament jew indirettament operazzjoni tas-*securitisation*;

“il-Ministru” tfisser il-Ministru responsabbli mill-finanzi;

“originatur” jew “cedent” tfisser persuna, inkluż il-Gvern jew Kunsill Lokali, li f’operazzjoni ta’ *securitisation*:

(a) jittrasferixxi b’kull mezz assi ta’ *securitisation* lil xi mezz tas-*securitisation*, jew

(b) jagħmel ftehim ma’ mezz tas-*securitisation* biex jittrasferixxi kull riskju kemm fl-intier tiegħu kemm in parti lill-mezz tas-*securitisation*, jew

(c) jikseb self jew faċilità ohra minn mezz tas-*securitisation*, liema self jew faċilità tkun assigurata direttament jew indirettament fuq l-assi tas-*securitisation*, u t-terminu originatur jew cedent għandu jinkludi wkoll l-impriżi sussidjarji jew affiljati kollha tiegħu;

“riċevibbli” tfisser dritt li jiġi riċevut hlas ta’ somma monetarja tkun kemm tkun, inkluż id-dritt li jiġi riċevut hlas ta’ somom fil-gejjieni li mhux stabbiliti mingħand debituri li għadhom m’humieq stabbiliti min huma;

“riskji” tfisser kull riskju ta’ kull tip, inklużi dawk li johorġu minn kull dritt dwar l-assi, kemm mobbli kemm immobbli, tanġibbli jew mhux tanġibbli, futuri jew li jeżistu, riskji li jirriżultaw minn xi obbligu jew attività ta’ terzi persuni u riskji li jirriżultaw minn xi avveniment jew ċirkostanza;

“*securitisation*” jew “operazzjoni tas-*securitisation*” tfisser operazzjoni jew arrangament li permezz tiegħu mezz tas-*securitisation*, direttament jew indirettament:

(a) jikseb assi tas-*securitisation* minn originatur b’kull mezz, jew

(b) jiehu kull riskju minn originatur b’kull mezz li jkun, jew

(c) jagħti self assigurat jew xi faċilità jew faċilitajiet ohra assigurati lil originatur,

u jiffinanzja xi wahda jew kull haġa minn dawk imsemmija hawn qabel, direttament jew indirettament, fl-intier jew in parti, permezz tal-hruġ ta’ strumenti finanzjarji, u jinkludi atti preparatorji mwettqa f’dak li għandu x’jaqsam ma’ dak imsemmi hawn qabel;

“strumenti finanzjarji” ghandha l-istess tifsira bhal dik moghtija lilha fl-Att dwar is-Swieq Finanzjarji;

“titoli” ghandha l-istess tifsira bhal dik moghtija lilha fl-Att dwar is-Swieq Finanzjarji;

“*underlying debtor*” tfisser, meta dan ikun japplika, persuna li l-obbligazzjoni taghha lejn l-originatur kienet l-għan ta’ operazzjoni ta’ *securitisation*.

TAQSIMA II

MEZZI TAS-SECURITISATION

Forma legali ta’
mezz tas-
securitisation.

3. (1) Mezz tas-*securitisation* jista’ jkun:

(a) kumpannija, inkluża kumpannija ta’ l-investment;

(b) soċjetà kummerċjali;

(c) *trust* mahluq b’ dokument miktub; jew

(d) kull struttura legali ohra li l-awtorità kompetenti tista’, permezz ta’ avviz, tippermetti li tintuża għal operazzjoni tas-*securitisation*,

stabbilit taht il-liġijiet ta’ Malta jew dawk ta’ ġurisdizzjoni rikonoxxuta mill-awtorità kompetenti.

(2) Meta mezz tas-*securitisation* ikun stabbilit skond dan l-Att jew kull liġi ohra relevanti:

(a) l-għanijiet u l-iskopijiet ta’ tali mezz għandhom ikunu limitati għal tali materji li huma neċessarji sabiex jitwettqu kull operazzjoni jew l-operazzjonijiet kollha mahsuba jew mehtieġa sabiex tiġi implimentata jew ikun hemm parteċipazzjoni f’operazzjoni tas-*securitisation* u l-attivitajiet kollha relatati u anċillari inklużi, mingħajr limitazzjoni l-akkwist, l-amministrazzjoni u l-ġbir ta’ krediti u riċevibbli ohra jew assi ohra tas-*securitisation*, it-tehid ta’ riskji, l-għoti ta’ self assigurat, il-hruġ ta’ strumenti finanzjarji jew is-self ta’ fondi sabiex jiġi finanzjat l-akkwist ta’ assi jew t-tehid ta’ riskji, it-tqabbid ta’ fornituri ta’ servizzi sabiex jamministraw jew isostnu l-attivitajiet tieghu u l-iffirmar ta’ strumenti derivattivi; u

(b) id-dokument kostituttiv tieghu ghandu jghid speċifikament li huwa mezz stabbilit bla hsara ghad-disposizzjonijiet ta' dan l-Att.

4. (1) Operazzjoni tas-*securitisation* tista' ssir billi jintuza aktar minn mezz tas-*securitisation* wiehed, kemm jekk stabbilit skond il-liġijiet ta' Malta kemm mod iehor, u d-disposizzjonijiet ta' dan l-Att ghandhom jiftiehm u bl-istess mod.

Operazzjonijiet tas-*securitisation*.

(2) Mezzi tas-*securitisation* ma jistghu imexxu ebda negozju jew kummerċ, hlief dak li ghandu x'jaqsam ma' jew ikun ancillari għall-operazzjoni tas-*securitisation*.

5. Minkejja d-disposizzjonijiet ta' kull liġi ohra, u tkun xi tkun in-natura ta' l-assi tas-*securitisation* mehtieġa jew tar-riskji mehuda mill-mezz tas-*securitisation*, il-mezz tas-*securitisation* m'ghandu jkun mehtieġ jikseb ebda liċenza, permess jew awtorizzazzjoni għajr kif provdut f' dan l-Att jew f' regolamenti magħmulin tahtu u partikolarment, iżda mingħajr limitu għall-ġeneralità ta' dak hawn qabel imsemmi, m'ghandu jehtieġ ebda liċenza taht l-Att dwar is-Servizzi ta' Investiment, l-Att dwar il-Kummerċ Bankarju, l-Att dwar Istituzzjonijiet Finanzjarji, u l-Att dwar il-Kummerċ ta' l-Assigurazzjoni. Il-hruġ u l-offerta ta' strumenti finanzjarji bil-mezz tas-*securitisation* ghandu madankollu jkompli jiġi regolat bid-disposizzjonijiet relevanti ta' l-Att dwar il-Kumpanniji u l-Att dwar is-Servizzi ta' Investiment.

Mezz tas-*securitisation* m'hu mehtieġ li jikseb ebda liċenza.

(Kap. 370).

(Kap. 371).

(Kap. 376).

(Kap. 403).

(Kap. 386).

(Kap. 370).

6. Il-mezzi tas-*securitisation* m'ghandhomx jitqiesu skemi ta' investment kollettiv kif imfisser fl-Att dwar is-Servizzi ta' Investiment:

Mezzi tas-*securitisation* m'ghandhomx jiġu kkunsidrati skemi ta' investment kollettiv.

Iżda l-awtorità kompetenti tista' ssemmi permezz ta' avviz lil ċerti kategoriji ta' mezzi tas-*securitisation* biex dawn ikunu skemi ta' investment kollettiv, u f'każ bħal dak l-awtorità kompetenti għandha tistabbilixxi sa fejn id-disposizzjonijiet ta' l-Att dwar is-Servizzi ta' Investiment, ghandu jkun japplika għall-imsemmija kategoriji tal-mezzi tas-*securitisation*.

7. Ebda proċedura mehuda fir-rigward ta' l-originatur taht l-Att dwar il-Kumpanniji, jew taht kull liġi ohra, inklużi kull proċedura ta' xoljiment u stralċ, kull proċedura ta' rkupru ta' kumpannija, kull rikostruzzjoni ta' kumpannija u kull proċedura li taffettwa id-drittijiet tal-kredituri b' mod ġenerali m'ghandhom jaffettwaw:

Mezz tas-*securitisation* separat u indipendenti mill-originatur.

(a) il-mezz tas-*securitisation*;

(b) kull assi tas-*securitisation* miksuba jew ir-riskji mehuda mill-mezz tas-*securitisation*, kif ukoll kull *cashflow* jew assi ohra tal-mezz tas-*securitisation*;

(ċ) kull hlas dovut mid-debituri sottostanti fir-rigward ta' assi tas-*securitisation*.

Delega ta' responsabbiltajiet u funzjonijiet amministrattivi mill-mezzi tas-*securitisation*.

8. (1) Il-mezz tas-*securitisation* jista' jiddelega r-responsabbiltà ta' l-immaniġġjar għall-amministrazzjoni ta' kuljum tal-mezz tas-*securitisation* jew ta' l-assi jew tar-riskji tiegħu, inkluż il-ġbir ta' kull talba, lil kull terza persuna, inkluż l-oriġinatur.

(2) Meta dik l-amministrazzjoni tkun giet delegata mill-mezz tas-*securitisation* lill-oriġinatur, dan ta' l-ahhar ma ghandu jkun jehtieġ ebda liċenza jew għarfien iehor mill-awtorità kompetenti taht ebda liġi li tkun tapplika.

(3) Sakemm il-ftehim bejn il-mezz tas-*securitisation* u dik il-persuna speċifikament ma jipprovdi xort'ohra, il-persuna delegata b'din l-amministrazzjoni ghandha tkun obbligata li tissegrega dawn l-assi mill-assi tagħha stess u dawk ta' klijenti ohra. Din is-segregrazzjoni ghandha tidentifika b'mod ċar ir-riċevibbli jew l-assi tas-*securitisation* li huma tal-mezz tas-*securitisation* u dik il-persuna ghandha iżomm informazzjoni dettaljata ta' l-assi kollha li tkun irċeviet u iddisponiet minnhom.

(4) Kull assi miżmuma minn kull terza persuna bhal dik għal mezz tas-*securitisation* għandhom jitqiesu li qed jinżammu bhala *trust* minn dik it-terza persuna għall-benefiċċju tal-mezz tas-*securitisation*.

TAQSIMA III

IT-TRASFERIMENT TA' ASSI TA' *SECURITISATION*

Trasferiment ta' l-assi tas-*securitisation*.

9. (1) L-oriġinatur u l-mezz tas-*securitisation* għandhom jagħzlu b'mod liberu kull mod ta' trasferiment ta' assi tas-*securitisation*, inklużi, mingħajr limitazzjoni, in-novazzjoni, il-bejgħ, iċ-ċessjoni u d-dikjarazzjoni ta' *trust*.

(2) Bla hsara għad-disposizzjonijiet l-ohra ta' dan l-Att, trasferiment ta' assi ta' *securitisation* minn oriġinatur għal mezz ta' *securitisation* bhal dak, għandu jkun validu u enforzabbli skond it-termini tiegħu stess u skond dan l-Att u ma għandux ikun soġġett għal karatterizzazzjoni mill-ġdid għal ebda raġuni.

(3) Id-disposizzjonijiet stipulati f'dan l-Att għandhom japplikaw *mutatis mutandis* għat-trasferimenti kollha minn oriġinatur lil mezz ta' *securitisation* jew kredituri tas-*securitisation*, kif ukoll għat-trasferimenti kollha magħmulin minn mezz ta' *securitisation* lil mezz tas-*securitisation* ohra jew lil kredituri tas-*securitisation*.

10. (1) Meta assi ta' *securitisation* jkun ċedut lil mezz ta' *securitisation* skond dan l-Att, ċessjoni bħal dik għandha tiġi trattata bħala wahda finali, assoluta u li torbot lill-oriġinatur, lill-mezz tas-*securitisation* u lit-terzi kollha u dik iċ-ċessjoni ma għandhiex tkun: ^{Ċessjonijiet.}

(a) soġġetta għal thassir, rexxiżjoni, revokazzjoni jew terminazzjoni, varjazzjoni jew tnaqqis minn xi persuna u għal ebda raġuni;

(b) soġġetta għal xi dritt ta' kredituri ta' l-oriġinatur għal ebda raġuni;

(ċ) soġġetta għall-ebda dritt ta' likwidatur, amminstratur provizorju, riċevitur, kuratur, kontrollur, kontrollur speċjali ta' l-oriġinatur jew xi ufficjal iehor bħal dak ta' l-oriġinatur għal ebda raġuni.

(2) Id-disposizzjonijiet tas-subartikolu (1) ta' dan l-artikolu għandhom japplikaw minkejja kull projbizzjoni jew restrizzjoni kontrattwali jew statutorja fuq l-oriġinatur biex iċedi l-assi tas-*securitisation* kollu kemm hu jew biss f'parti lil kull terza persuna. Il-Ministru, b'parir ta' l-awtorità kompetenti, jista' permezz ta' avviż jiddikkjara t-tipi ta' kuntratti li din id-disposizzjoni ma għandhiex tapplika għalihom.

(3) Id-disposizzjonijiet tas-subartikoli (1) u (2) ta' dan l-artikolu ma għandhomx japplikaw:

(a) meta jkun hemm frodi daparti tal-mezz tas-*securitisation*, jew

(b) fir-rigward ta' kull ċessjoni li saret fi żmien meta l-mezz tas-*securitisation* kien jaf jew messu kien jaf li kien hemm applikazzjoni għax-xoljiment u l-istralċ ta' l-oriġinatur kien pendent minhabba f'insolvenza, jew li l-oriġinatur ha passi formali taht xi liġi applikabbli biex iwassal għax-xoljiment u l-istralċ tiegħu minhabba fl-insolvenza:

Iżda, sakemm il-mezz tas-*securitisation* kellu għarfien attwali ta' l-imsemmija kwistjoni, għall-iskopijiet tas-subartikolu (2) ta' dan l-artikolu, għandu jitqies li l-mezz tas-*securitisation* ma setax ikun jaf li kien hemm applikazzjoni għax-xoljiment u l-istralċ ta' l-oriġinatur minhabba f'insolvenza pendent, jew li l-oriġinatur ikun ha passi formali taht il-liġi applikabbli biex jwassal għax-xoljiment u l-istralċ minhabba fl-insolvenza jekk l-ebda dokument jew

informazzjoni ohra ma kienu registrati ghal dan l-effett mar-Registratur tal-Kumpanniji u ma kienu aċċessibbli għall-pubbliku.

(4) F'każ ta' ċessjoni favur mezz tas-*securitisation*, ma għandux jinhtieg li ċ-ċessjoni jkollha prezz, jew meta jinftiehem prezz, dak il-prezz ikun wiehed fiss jew determinat. Il-korrispettiv jista' jkun ukoll wiehed determinabbli b'referenza għal kull formula li jista' jkun hemm ftehim fuqha, jew ikun għal u skond il-pattijiet ta' operazzjoni tas-*securitisation*.

(5) Kemm-il darba l-partijiet ta' xi trasferiment lil mezz tas-*securitisation* ma jkunux jipprovdu mod iehor, jew il-mezz tas-*securitisation* jassumi b'mod espress kull obbligu, id-debitur sottostanti ma għandu jkollu ebda dritt jew jedd kontra l-mezz tas-*securitisation* b'konnessjoni ma' ebda obbligu relatat ma' l-assi tas-*securitisation*. Id-debitur sottostanti għandu jkompli jgawdi d-drittijiet kollha taht il-kuntratt ta' ċessjoni kontra l-originator li għandu jibqa' unikament responsabbli għat-twettiq ta' l-obbligi kollha taht dak il-kuntratt.

(6) Ċessjoni favur mezz tas-*securitisation* ma jkunx validu sakemm ma jkunx hemm evidenza bil-miktub. Iċ-ċessjoni ta' assi lil mezz tas-*securitisation* ikun komplet u l-proprjetà ta' l-assi tkun akkwistata *ipso jure* mill-mezz tas-*securitisation* hekk kif iċ-ċessjoni tinkiteb skond dan l-Att u d-disposizzjonijiet ta' l-Artikolu 1469 tal-Kodiċi Ċivili ma għandhomx ikunu japplikaw.

Ċessjoni ta' assi tas-*securitisation* eżistenti.

11. (1) Iċ-ċessjoni ta' assi tas-*securitisation* lil mezz tas-*securitisation* għandu jkun validu u effettiv jekk iċ-ċessjoni tidentifika mill-inqas żewġ karatteristiċi li ġejjin tal-klassi ta' riċevibbli li huma soġġetti għaċ-ċessjoni:

(a) it-tip ta' dejn jew l-assi jew il-kuntratt li jwassal għad-dejn;

(b) il-klassi jew it-tip tad-debituri;

(ċ) il-perjodu tal-hlas lura meta d-djun ikunu dovuti, sabiex kull parti interessata tingħata l-opportunità li tiddetermina liema riċevibbli jkunu nkluzi fiċ-ċessjoni u ma għandux jinhtieg li l-isem tad-debitur jew tad-debituri, id-data jew l-ammont ta' kull dejn partikolari, jiġu speċifikati.

(2) Meta l-partijiet għal ċessjoni jitolbu li dejn partikolari ma jkunx inkluz fiċ-ċessjoni, il-kwistjoni għandha tiġi rizzolta kif hemm provdut għalih fiċ-ċessjoni, u l-prezz aggregat, jekk ikun hemm, għat-trasferiment għandu jiġi aġġustat, jekk it-talba tkun ġustifikata, billi l-

valur tad-dejn jitnaqqas minn hemm, u dan l-aġġustament ma ghandu jaffettwa bl-ebda mod il-validità jew l-effetti ta' ċessjoni ta' riċevibbli ohra.

12. (1) Ir-riċevibbli futuri ta' originatur, inklużi talbiet futuri kontra debitori futuri, jistgħu jkunu s-suġġett ta' ċessjoni favur mezz ta' *securitisation*. Dik iċ-ċessjoni ghandha tkun valida u effettiva jekk tidentifika mill-inqas wiehed mill-fatturi tal-klassi ta' riċevibbli li huwa soġġett għaċ-ċessjoni minn kull wiehed mill-Fatturi A u Fatturi B, elenkati fis-subartikolu (2) ta' dan l-artikolu, sabiex tagħti lil kull parti interessata l-opportunità li tiddetermina b'mod raġonevoli liema riċevibbli huma inklużi fiċ-ċessjoni u ma jkunx jinhtieg li l-isem tad-debitur jew debitori, id-data jew l-ammont ta' kull dejn partikolari jiġu speċifikati.

Ċessjoni ta' riċevibbli futuri.

(2) Ghandhom ikunu indikati bhala:

Fatturi A -

- (a) it-tip tad-dejn jew l-assi jew il-kuntratt li jwassal għad-dejn;
- (b) il-klassi jew it-tip tad-debituri;
- (ċ) l-assi, inklużi assi futuri, li jwasslu għar-riċevibbli; u

Fatturi B -

- (a) il-perjodu ta' zmien li fih jista' jsehh id-dejn;
- (b) il-perjodu tal-hlas lura meta d-djun ikunu dovuti.

(3) Iċ-ċessjoni ta' xi riċevibbli futur wiehed jew aktar tkun effettiva fil-hin tal-konklużjoni tal-kuntratt oriġinali ta' ċessjoni bejn iċ-ċedent u ċ-ċessjonarju mingħajr ma jkun hemm bżonn ta' xi att ġdid ta' trasferiment biex ikun ċedut kull riċevibbli ta' dak it-tip hekk kif dan jiġi fis-sehh.

(4) Avviż ta' ċessjoni mogħtija skond dan l-Att fil-hin ta' l-operazzjoni tas-*securitisation* ghandha tkun valida u effettiva dwar riċevibbli futur u ma għandhiex għalfejn tkun ripetuta la darba riċevibbli jidhol fis-sehh.

(5) Riċevibbli futuri jistgħu ukoll ikunu s-suġġett ta' kull sigurtà kollaterali jew kollaterali ta' trasferiment ta' titolu.

13. (1) Minkejja d-disposizzjonijiet tal-Kodiċi Ċivili, f'każ ta' ċessjoni ta' assi ta' *securitisation* lil mezz ta' *securitisation*, id-debitur għandu jiġi kunsidrat li jkun ġie notifikat biċ-ċessjoni meta xi wiehed minn dawn l-avvenimenti li ġejjin li jsehhu skond l-għażla taċ-ċedent jew taċ-ċessjonarju:

(a) man-notifika ta' l-avviż lid-debitur b'kull tip ta' kitba; jew

(b) mal-pubblikazzjoni ta' avviż kif ġej:

(i) f'gazzetta ta' kuljum li tiġi ċirkolata eskusivament jew prinċipalment f'Malta, jew

(ii) meta jkun jidher li l-maġġoranza tad-debituri jirrisjedu barra minn Malta, f'gazzetta ta' kuljum li tiġi ċirkolata eskusivament prinċipalment f'dik il-ġurisdizzjoni barra minn Malta, jew

(ċ) meta jkun hemm xi dubju fejn ikunu jirrisjedu l-maġġoranza tad-debituri, f'gazzetta ta' kuljum li jkollha ċirkolazzjoni internazzjonali mferrxa.

(2) Dak l-avviż għandu jkun effettiv għall-iskopijiet u l-effetti kollha tal-Kodiċi Ċivili fir-rigward ta' terzi persuni, inkluż id-debitur, kif ġej:

(a) jekk l-avviż isir skond l-artikolu 187 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, fid-data tan-notifika u d-disposizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandhom jiddeterminaw id-data ta' dik in-notifika; jew

(b) jekk l-avviż ikun ġie notifikat bil-posta, jumejn wara li ċ-ċedent jew iċ-ċessjonarju jkun imposta l-avviż bil-miktub kien jintbagħat lejn l-aħhar indirizz magħruf tad-debitur; jew

(ċ) jekk in-notifika tal-avviż issir permezz ta' publikazzjoni f'gazzetta, il-hin tal-ftuh għax-xogħol fil-post fejn jiġi publikat l-avviż fil-gazzetta; jew

(d) jekk in-notifika ta' l-avviż issir b'mezz elettroniku, ġurnata waħda wara li jkun ntbagħat l-avviż elettroniku, skond il-każ, kemm-il darba dak l-avviż ma jkunx fih espressament xi data iktar tard meta għandu jidhol fis-sehh.

(3) L-istess regoli ghandhom japplikaw, *mutatis mutandis*, ghan-notifika ta' avvizi mehtieġa dwar ir-raham ta' assi ta' *securitisation*, u l-artikolu 1966 tal-Kodiċi Ċivili ghandu jiftiehem f'dan is-sens.

(4) Jekk, waqt il-perjodu bejn id-data ta' ċessjoni ta' l-assi ta' *securitisation* u n-notifika kif hemm imsemmi fis-subartikoli ta' hawn qabel, iċ-ċedent isir insolventi, dik l-insolvenza ma ghandu jkollha ebda effett fuq dik iċ-ċessjoni u kull notifika ta' ċessjoni maghmula skond is-subartikoli ta' hawn qabel ghandha tkun wahda valida u effettiva.

(5) In-notifika ta' ċessjoni ghandha tidentifika l-fatturi tal-klassi tar-riċevibbli kif hemm stipulat fl-artikoli 11 jew 12, skond il-każ.

14. (1) Id-disposizzjonijiet li ġejjin tal-Kodiċi Ċivili ma ghandhomx ikunu japplikaw f'każ ta' ċessjoni ta' assi ta' *securitisation* lil mezz ta' *securitisation*:

Modifika ta' ċerti disposizzjonijiet tal-Kodiċi Ċivili. Kap. 16.

- (a) artikolu 1483 (1);
- (b) artikolu 1056 (1);
- (ċ) artikoli 1978 sa 1984; u
- (d) artikolu 2013 (3);

(2) Id-disposizzjonijiet li ġejjin tal-Kodiċi Ċivili ghandhom japplikaw soġġett għall-modifiki hawn imsemmija:

(a) l-artikolu 1201 ma ghandux japplika għal ċessjoni ta' assi ta' *securitisation* lil mezz ta' *securitisation*. Man-notifika ta' ċessjoni lid-debitur skond dan l-Att, id-drittijiet kollha ta' tpaċija bejn id-debitur u iċ-ċedent għall-mezz tas-*securitisation* ghandhom jjeqfu;

(b) l-artikolu 1968(1) tal-Kodiċi Ċivili ma ghandux japplika, u meta l-oġġett mogħti b'rahan lil mezz ta' *securitisation* ikun dejn, il-mezz tas-*securitisation* ghandu, kemm-il darba ma jiġix miftiehem xort'ohra ma' l-oriġinatur, ikun responsabbli għall-ġbir ta' dak id-dejn meta dan jimmatara u l-mezz ta' *securitisation* jista' jpoġġi l-flejjes jew affarijiet ohrajn li rċieva kif miftiehem, jew fin-nuqqas ta' tali ftehim, jista' jżomm l-istess bhala sigurtà għad-dejn sakemm dan isir dovut li jithallas;

(ċ) l-artikolu 1968 (4) ma ghandux japplika għal rahan ta' dejn li jkun qed jagħmel tajjeb għall-assi ta' *securitisation* ċedut

lil mezz ta' *securitisation*. Man-notifika taç-çessjoni skond dan l-Att, id-debitur ta' dejn moghti b'rahan ma jista jopponi lill-mezz ta' *securitisation* ebda tpaçija bejn id-debitur tad-dejn moghti b'rahan u l-originatur; u

(d) minghajr preġudizzju ghad-dritt tal-partijiet biex iċedu drittijiet permezz ta' atti pubbliçi u jirreġistrawhom skond l-artikoli 2051 u 2052 tal-Kodiçi Ċivili, l-artikolu 1470(2) ma ghandux japplika meta dritt li jkun ġej minn att pubbliku, inkluż kull dritt ipotekarju, jiġi trasferit lil, jew minn, mezz ta' *securitisation*.

(3) Għall-iskopijiet ta' l-artikolu 1475 tal-Kodiçi Ċivili u għall-iskopijiet ta' operazzjoni ta' *securitisation* -

(a) kemm-il darba ç-çessjoni espressament tipprovdi xort' ohra, iç-çessjoni tad-dejn ghandha tinkludi ukoll il-garanzija ta' kull xorta jew indemnizz għall-hlas tad-dejn;

(b) iç-çessjoni tad-dejn ghandha tinkludi kull garanzija, ta' liema xorta tkun jew indemnizz li tkun aċcessorja ghad-dejn u dan minkejja kull projbizzjoni jew restrizzjoni kontrattwali kontra çessjoni bhal din tad-dejn fil-kuntratt tal-garanzija, li tkun jew indemnizz. Il-Ministru, b'parir ta' l-awtorità kompetenti, jista' permezz ta' avviż jiddikjara t-tipi ta' garanziji, jew indemnizz li dwarhom din id-disposizzjoni ma ghandhiex tapplika; u

(ç) kull avviż ta' çessjoni li ssir lid-debitur jew lil klassi ta' debitori skond dan l-Att, ghandu jkollha effett ghar-rigward tal-persuni kollha li jkunu qegħdin jagħtu dik il-garanzija, jew dak l-indemnizz minghajr il-htieġa ta' ebda avviż jew formalitajiet ohra dwarhom.

L-assunzjoni tar-riskji.

15. (1) Kull riskju u r-riskji kollha jistgħu jkunu assunti minn mezz tas-*securitisation* u jiġu *securitised* skond dan l-Att.

(2) Il-mezz ta' *securitisation* jista' jassumi riskji billi jakkwista assi, jiggerantixxi jew jassumi obbligi, jidhol f'kuntratti derivattivi jew jikkommetti lillu nnifsu b'kull mod iehor.

(3) Kemm-il darba il-partijiet ma jiddeterminawx mod iehor espressament bil-miktub, assunzjoni ta' riskju u kull *hedging* jew operazzjoni ta' derivattiva jew prodott mdahhal fil-kuntest ta' operazzjoni ta' *securitisation* għal kull raġuni li tkun ma ghandux jitqies li jkun kuntratt ta' assigurazzjoni għall-effetti u l-iskopijiet kollha tal-liġi.

16. (1) Sakemm ma jkunx determinat speċifikament bil-miktub mod ieħor fil-pattijiet tal-ħruġ tat-titoli:

(a) id-detenturi tat-titoli mahruġa minn mezz ta' *securitisation* għandhom ikollhom privileġġ fuq l-assi tas-*securitisation* u dan il-privileġġ għandu jiggrada qabel it-talbiet l-oħra kollha fil-liġi, hlief għal kredituri oħrajn ta' *securitisation* li jgawdu gradazzjoni mogħtija lilhom qabel bil-kunsens jew l-gharfien ta' l-imsemmija detenturi; u

(b) l-imsemmi privileġġ jestendi għall-qliegħ mnissel minn assi ta' *securitisation*, għal kull flejjes riċevuti bhala pagament u għall-assi fejn dawn jiġu investiti, jekk ikun hemm.

(2) Jekk jintuza mezz ta' akkwist f'operazzjoni ta' *securitisation* u dak il-mezz jkun differenti mill-mezz li jkun qed johroġ it-titoli, l-imsemmi privileġġ għandu johroġ mill-assi tas-*securitisation* tal-mezz ta' l-akkwist.

(3) L-imsemmi privileġġ johroġ mil-liġi u ma għandu jkun reġistrat f'ebda reġistru.

(4) Il-kundizzjonijiet tal-ħruġ ta' strumenti finanzjarji mill-mezz ta' *securitisation* għandhom ikunu vinkolanti fuq il-mezz tas-*securitisation*, il-kredituri tas-*securitisation* jew persuni oħrajn li jkunu taw il-kunsens tagħhom għal dan, inkluż fil-każ fejn il-mezz tas-*securitisation* jitqiegħed fi proċeduri ta' xoljiment u stralc, proċedura biex il-kumpannija tirkupra, rikostruzzjoni tal-kumpannija jew proċeduri oħra li jaffettwaw id-drittijiet tal-kredituri b'mod ġenerali.

(5) L-ebda persuna, hlief kreditur ta' *securitisation*, ma jista' jitlob il-ħruġ jew inforzar ta' xi att kawtelatorju jew mandat kontra l-mezz tas-*securitisation* hlief meta l-qorti tkun sodisfatta li kien hemm frodi daparti tal-mezz tas-*securitisation*.

17. (1) Il-partijiet ta' operazzjoni ta' *securitisation* għandhom ikunu liberi jagħzlu l-liġi li tirregola kuntratti relatati ma' jew anċillari għal operazzjoni ta' *securitisation*.

(2) Il-Ministru, bil-parir ta' l-awtorità kompetenti, jista' jagħmel regoli fuq il-liġi applikabbli għal kwistjonijiet relatati ma', jew anillari għal, operazzjonijiet ta' *securitisation*, fejn il-liġi ta' pajjiż, li mhux Malta, tista' tkun tapplika inklużi, mingħajr limitazzjoni:

(a) regoli fuq il-liġi adatta għal kull kuntratt;

- (b) validità formali u materjali ta' kull kuntratt;
- (c) drittijiet ta' terzi persuni bl-ghemil ta' kuntratt;
- (d) kwistjonijiet ta' proprjetà relatati ma' operazzjonijiet ta' *securitisation*; u
- (e) prijoritàjiet dwar id-drittijiet ta' terzi persuni.

TAQSIMA IV

REGOLAMENT TA' MEZZI TA' *SECURITISATION*

Mezzi ta' *securitisation*.

18. L-ebda mezz stabbilit taht il-liġijiet ta' Malta ma jista jibda jinneozja bhala mezz ta' *securitisation* f'Malta jew minn Malta sakemm javża lill-awtorità kompetenti fuq il-formola adatta li jkun bi hsiebu jidhol f'operazzjoni wahda jew iżjed ta' *securitisation*.

Mezzi ta' *securitisation* pubbliċi.

19. (1) Għall-iskopijiet ta' dan l-artikolu:

(a) mezz ta' *securitisation* pubbliku jfisser mezz ta' *securitisation* li johroġ jew jixtieq johroġ strumenti finanzjarji lill-pubbliku fuq bażi kontinwa; u

(b) il-frazi "johroġ strumenti finanzjarji lill-pubbliku" għandu jkollha l-istess tifsira bhall-frazi "offerta magħmula lill-pubbliku", kif hemm infassal fl-artikolu 2(3) ta' l-Att dwar il-Kumpanniji.

(2) Mezz ta' *securitisation* pubbliku, għandu japplika bil-miktub għal liċenza taht dan l-Att lill-awtorità kompetenti qabel ma jinħarġu strumenti finanzjarji lill-pubbliku.

(3) L-applikazzjonijiet kollha għal liċenza ta' mezz ta' *securitisation* pubbliċi għandhom ikunu f'dik il-forma u akkompanjati b'dik l-informazzjoni, u għandhom ikunu konformi mar-rekwiżiti kif jistgħu jkunu ordnati minn żmien għal żmien b'direttiva u applikazzjoni li tista' tkun revokata biss b'notifika bil-miktub lill-awtorità kompetenti fil-perjodu qabel ma din tkun inħarġet jew giet miċhuda.

(4) L-awtorità kompetenti għandu jkollha s-setgħa biex tirrikjedi kull mezz ta' *securitisation* pubbliku biex tipprovdi dik l-informazzjoni li tqies mehtieġa għall-iskopijiet biex tiddetermina applikazzjoni għal liċenza jew għal iskopijiet biex tiddetermina jekk għandhiex tirrestringi jew tirrevoka liċenza.

(5) L-ebda mezz ta' *securitisation* pubbliku ma ghandu jinghata licenza sakemm:

(a) il-mezz ta' *securitisation* pubbliku jkollu organizzazzjoni adegwata u rizorsi adegwati biex jitwettaq in-negozju tieghu;

(b) il-persuni kollha li ghandhom effettivament imexxu n-negozju tal-mezz ta' *securitisation* pubbliku jkunu persuni adatti li jiżguraw l-amministrazzjoni prudenti tieghu; u

(c) il-mezz ta' *securitisation* pubbliku jissodisfa dawk il-kundizzjonijiet l-oħra li jistghu jiġu stipulati b'direttivi mahruġin mill-awtorità kompetenti.

(6) L-awtorità kompetenti ghandha tiddetermina kull applikazzjoni ghal licenza fi żmien xahar wara li tirċievi l-applikazzjoni jew, jekk l-applikazzjoni ma tharisx is-subartikolu (2) ta' dan l-artikolu, jew tkun mehtieġa informazzjoni addizzjonali, fi żmien xahar wara l-osservanza ta' l-imsemmi subartikolu jew l-ghoti ta' l-informazzjoni skond il-każ, skond liema jkun l-iżjed tard. F'kull każ, applikazzjoni ghandha tkun determinata fi żmien xahrejn wara li l-awtorità tkun rċevietha.

(7) L-awtorità kompetenti ghandha tiddetermina applikazzjoni billi taghmel xi haġa minn dawn li ġejjin:

(a) toħroġ licenza mingħajr kondizzjonijiet;

(b) toħroġ licenza bla hsara ghal dawk il-kundizzjonijiet li hi tqies xierqa;

(c) tirrifjuta li toħroġ licenza: u jekk l-awtorità tirrifjuta applikazzjoni, hija ghandha tinforma lill-applikant bir-raġunijiet tar-rifjut tagħha bil-miktub.

(8) Meta ghal xi raġuni l-awtorità kompetenti tonqos milli tiddetermina applikazzjoni ghal licenza fil-perjodu stipulat taht is-subartikolu (6) ta' dan l-artikolu, dak il-fatt ghandu jitqies li jikkostitwixxi rifjut biex toħroġ il-licenza.

(9) (a) Mingħajr preġudizzju ghal xi wahda mis-setgħat mogħtija lilha b'dan l-Att, l-awtorità kompetenti tista', kull meta jidrilha mehtieġ, tagħti b'avviż bil-miktub, dawk id-direttivi li jidhrilha xierqa fiċ-ċirkostanzi, u kull persuna li lilha jinghata l-avviż ghandha tobdi, thares u xort'ohra tagħti effett lil kull direttiva bhal dawk fiż-żmien u bil-mod imsemmi fid-direttiva.

(b) Is-setgħa li tagħti direttivi taht dan is-subartikolu għandha tinkludi is-setgħa li tvarja, tibdel, iżżid jew tirtira kull direttiva, kif ukoll is-setgħa li tohroġ direttivi ġodda jew direttivi oħra.

(ċ) Meta l-awtorità kompetenti tkun sodisfatta li ċ-ċirkostanzi hekk jitolbu, tista' f'kull żmien tagħmel pubblika kull direttiva li tkun tat taht id-disposizzjonijiet ta' dan l-artikolu.

(10) Liċenza għandha awtomatikament tieqaf milli jkollha kull effett jekk id-detentur:

(a) jirrinunzja għal-liċenzja tiegħu; jew

(b) ma jibdiex in-negozju skond il-liċenza fi żmien erbgħa u għoxrin xahar mill-ħruġ tagħha jew f'perjodu ta' żmien ieħor kif jista' jkun speċifikat fil-liċenza; jew

(ċ) ikun dikkjarat fallut jew jidhol f'proċeduri ta' stralċ.

(11) L-awtorità kompetenti tista' timponi restrizzjonijiet fuq liċenza jew tista' tirrevoka liċenza f'kull waħda minn dawn iċ-ċirkostanzi li ġejjin:

(a) jekk xi dokument jew informazzjoni li takkompanja applikazzjoni għal liċenza jew xi informazzjoni konnessa mogħtija magħha hija falza f'xi haġa materjali jew jekk id-detentur ta' liċenza jahbi minn, jew ma javżax lill-awtorità kompetenti b'xi dokument jew informazzjoni jew bdil fihom li huwa kellu l-obbligu li jikxef jew javża taht dan l-Att; jew

(b) jekk id-detentur jonqos milli jħares xi disposizzjonijiet ta' dan l-Att jew direttiva mahruġa taht dan l-Att jew il-kondizzjonijiet li tahtom tkun nharġet il-liċenza; jew

(ċ) jekk id-detentur x'aktarx mhux ser ikun jista' jħares l-obbligazzjonijiet tiegħu.

(12) L-awtorità kompetenti għandu jkollha s-setgħa li tvarja jew tneħhi kull restrizzjoni imposta taht is-subartikolu preċedenti.

(13) Meta l-awtorità kompetenti tkun bi ħsiebha tirristringi jew tirrevoka liċenza jew tvarja xi restrizzjoni, hija għandha tinnotifika lill-mezz ta' *securitisation* pubbliku b'din l-intenzjoni bil-miktub; din in-notifika għandha tispeċifika l-bażi li fuqha l-awtorità kompetenti għandha intenzjoni li tiehu azzjoni u għandha tispeċifika perjodu li fih il-mezz ta' *securitisation* pubbliku għandu jkun intitolat li jressaq l-ilmenti

tieghu lill-awtorità kompetenti ghaliex din l-azzjoni ma ghandhiex tittiehed. Sakemm l-awtorità kompetenti ma tiddeedix li l-kwistjoni hija urgenti, hija m'ghandha timponi jew tvarja ebda restrizzjoni jew tirrevoka ebda liċenza qabel l-iskadenza ta' dan il-perjodu.

(14) Kull persuna li thoss ruhha aggravata b'deċiżjoni ta' l-awtorità kompetenti:

- (a) li tirrifjuta applikazzjoni ghal liċenza;
- (b) li timponi xi kundizzjoni fuq l-ghoti ta' liċenza;
- (ċ) li timponi jew tvarja xi restrizzjoni;
- (d) li tirrevoka liċenza; jew

(e) għax l-awtorità kompetenti tonqos milli tiddetermina applikazzjoni ghal liċenza taht is-subartikolu (7) ta' dan l-artikolu,

tista' tappella quddiem it-Tribunal tas-Servizzi Finanzjarji kontra dik id-deċiżjoni fil-perjodu u taht il-kundizzjonijiet stabbiliti taht l-Att dwar Awtorità għas-Servizzi Finanzjarji ta' Malta.

(15) Kull persuna li tikser jew ma tharisx id-disposizzjonijiet tas-subartikolu (2) ta' dan l-artikolu, jew tikser jew ma tharisx xi kundizzjoni, obbligu, rekwiżit, direttiva jew ordni magħmulin jew mogħtija taht dan l-artikolu, tkun hatja ta' reat.

(16) Persuna hatja ta' reat taht id-disposizzjonijiet tas-subartikolu (15) ta' dan l-artikolu għandha, meta tinsab hatja, tehel multa li ma taqbiżx il-hamsin elf lira Maltija. L-ebda proċeduri dwar reat taht dan l-artikolu ma għandhom jinbdeu mingħajr il-kunsens ta' l-Avukat Ġenerali.

20. (1) Għat-twertiq aħjar tad-disposizzjonijiet ta' dan l-Att, l-awtorità kompetenti tista' minn żmien għal żmien, tohroġ u tippubblika regoli kif meħtieġa jew xierqa b'konnessjoni ma' operazzjonijiet ta' *securitisation*. Ir-regoli jkunu jorbtu l-mezzi ta' *securitisation* u kredituri ta' *securitisation* u persuni oħra kif jiġi speċifikat fihom. Regoli.

(2) Mingħajr preġudizzju għall-ġeneralità tad-disposizzjonijiet ta' qabel, l-awtorità kompetenti tista' tohroġ regoli li tqis li jkunu xierqa:

- (a) għall-iskop li tistabilixxi kundizzjonijiet li għandhom ikunu sodisfatti minn mezz ta' *securitisation* pubbliku biex jakkwista liċenza taht dan l-artikolu;

(b) għar-regolament tal-kustodja ta' l-assi u ta' l-istrumenti finanzjarji tal-mezz ta' *securitisation* pubbliku; u

(ċ) għall-iskopijiet biex tirrikjedi stqarrijiet perjodiċi mill-mezzi ta' *securitisation* pubbliċi.

TAQSIMA V

MIXXELLANJI

Segretezza
professjonali,
kunfidenzjalità u
protezzjoni tad-
data.

21. (1) L-ebda liġi li għandha x'taqsam mas-segretezza professjonali jew kunfidenzjalità ma għandha tiftiehem b'mod li tirrestringi jew tillimita b'xi mod operazzjoni ta' *securitisation*. Kull *data* jew informazzjoni li tiġi trasferita bejn il-partijiet f'kuntest ta' operazzjoni ta' *securitisation* għandha tkun trasferibbli b'mod xieraq mingħajr ebda restrizzjoni jew limitazzjoni, għalkemm dik id-*data* jew informazzjoni għandha żżomm l-istat ta' segretezza jew kunfidenzjalità tagħha għal kull effett u skop iehor.

Kap. 440.

(2) Fil-kuntest ta' operazzjoni ta' *securitisation*, skond l-obbligi li johorġu mill-Att dwar il-Protezzjoni u l-Privatezza tad-*Data*, involuti:

(a) kull trasferiment ta' *data* personali għandu jitqies li jkun għal skop li jirrigwarda interess leġittimu ta' min ikun qed jittrasferixxi u min ikun qed jirċievi dik id-*data*, sakemm ma jintweriex li dak l-interess ikun superat mill-interess tal-protezzjoni tad-drittijiet u l-libertajiet fundamentali tas-suġġett tad-*data* u b'mod partikolari id-dritt tal-privatezza; u

(b) kull trasferiment ta' *data* personali lil pajjiż terz li ma jiżgurax livell adegwat ta' protezzjoni fi hdan it-tifsira ta' l-Artikolu 27 (2) ta' l-Att dwar il-Protezzjoni u l-Privatezza tad-*Data* ma għandux jirrikjedi l-awtorizzazzjoni tal-Kummissarju tal-Protezzjoni tad-*Data*, meta l-kontrollur ikun jipprovdi salvagwardji adegwati, li jistgħu jirrizultaw b'mod partikolari permezz ta' disposizzjonijiet kontrattwali xierqa, għar-rigward tal-protezzjoni tal-privatezza u d-drittijiet u l-libertajiet fundamentali ta' l-individwi u fir-rigward ta' l-eżerizzju tagħhom.

(3) Għall-iskopijiet tal-paragrafi preedenti, *data* jew informazzjoni li tiġi trasferita bejn persuni fil-kuntest ta' operazzjoni ta' *securitisation* għandhom jitqiesu li jinkludu *data* jew informazzjoni trasferita bejn l-originatur u l-mezz ta' *securitisation*, jew bejn mezzi ta' *securitisation*, jew bejn il-mezz ta' *securitisation* u kull persuna ohra li

jkollha d-delega tar-responsabbiltajiet u l-funzjonijiet ta' l-amministrazzjoni, jew bejn il-mezz ta' *securitisation* u rappreżentant ta' l-investituri, jew bejn l-oriġinatur jew il-mezz ta' *securitisation* u aġenziji li jiggradaw il-kreditu, jew bejn l-oriġinatur jew il-mezz tas-*securitisation* u kull kontro-parti f'kuntratt ta' derivattiva, min qed jislef, fornitur tal-likwidità jew fornitur ta' appoġġ tal-kreditu.

22. (1) Minkejja d-disposizzjonijiet ta' kull liġi ohra, ikun legittimu li: Disposizzjonijiet mixxellanji.

(a) id-dokumenti kostituttivi tal-mezz ta' *securitisation*:

(i) jaghtu s-setgha li jiġu appuntati diretturi f'kull kreditur ta' *securitisation* jew klassi ta' l-istess, b'eskluzjoni ghal persuni ohra;

(ii) jaghtu s-setgha li jintalab jew jitqiegħed mezz ta' *securitisation* fi proċeduri ta' xoljiment u stralc, proċedura biex tirkupra l-kumpannija, rikostruzzjoni tal-kumpannija jew proċeduri ohra li jolqtu d-drittijiet tal-kredituri b'mod ġenerali, f'kull kreditur ta' *securitisation* jew klassi ta' l-istess, b'eskluzjoni ghal persuni ohra;

(b) mezz ta' *securitisation* jidhol f'kull ftehim li fih disposizzjonijiet li permezz tagħhom kredituri ta' *securitisation* jew kull azzjonist tal-mezz ta' *securitisation*, inkluż l-oriġinatur, jaċċetaw li jirrestringu jew iċedu d-dritt tagħhom biex jibdew il-proċess li jwassal ghal proċeduri ta' xoljiment u stralc, proċedura biex tirkupra l-kumpannija, rikostruzzjoni tal-kumpannija jew il-proċeduri kollha li jolqtu d-drittijiet tal-kredituri b'mod ġenerali b'konnessjoni ma' mezz ta' *securitisation*, jew biex jittrasferixxu dak id-dritt lil xi persuna; u

(ċ) mezz ta' *securitisation* jidhol fi ftehim ma' l-oriġinatur bl-effett li l-oriġinatur jingħata drittijiet mill-mezz ta' *securitisation* fuq l-assi kollha jew parti mill-assi tas-*securitisation* tal-mezz ta' *securitisation* li jistghu jkunu disponibbli wara l-hlas tal-kredituri tas-*securitisation*.

(2) Id-disposizzjonijiet ta' l-artikolu 110(1) ta' l-Att dwar il-Kumpanniji ma għandux japplika għall-ghoti ta' assistenza finanzjarja minn mezz ta' *securitisation*, kemm-il darba l-mezz ta' *securitisation* ma jkunx kostitwit bhala kumpannija pubblika b'responsabbiltà limitata.

(3) Sakemm ma jkunx provdut xort'ohra fid-dokumenti kostituttivi tal-mezz ta' *securitisation*, mezz ta' *securitisation* għandu

jkollu s-setgha li johroġ strumenti finanzjarji li l-valur jew il-qliegħ tagħhom ikun marbut ma' kompartimenti, assi jew riskji speċifiċi, jew liema hlas lura jkun soġġett għall-hlas lura ta' strumenti ohrajn, ċerti talbiet jew ċerti kategoriji ta' ishma. Jekk l-mezz ta' l-akkwist jkun differenti mill-mezz tal-hruġ, il-valur, il-qliegħ tagħhom u l-kondizzjonijiet ta' hlas lura jistgħu jkunu marbutin ukoll ma' l-assi u l-obbligazzjonijiet tal-mezz ta' l-akkwist. Detenturi ta' strumenti finanzjarji bħal dan għandhom igawdu l-privileġġ li johroġ mill-artikolu 16(1) ta' dan l-Att.

(4) Kull kuntratt li jsir b'konnessjoni ma' operazzjoni ta' *securitisation* għandu jkun validu u inforzabbli skond il-pattijiet tiegħu, u fejn il-partijiet jaqblu bil-miktub fuq l-effetti li jġib miegħu avveniment speċifikat, ebda parti ma għandha tehtiegħ li tinkiser deċiżjoni jew dikjarazzjoni mill-qorti li tkun tikkonferma li l-avveniment speċifikat ikun seħħ jew ma seħħ.

(5) Id-disposizzjonijiet tat-*Titolu XVII* tal-Kodiċi Ċivili jew ta' kull parti ohra tal-Kodiċi Ċivili jew ta' kull liġi ohra sakemm dawn jillimitaw jew jirrestringu l-imposizzjoni ta' mghax u mghax kompost, ma għandhomx japplikaw għal djun jew obbligi ohrajn herġin mill-kuntest ta' operazzjoni ta' *securitisation* taht dan l-Att; u għandu jkun leġittimu li l-ammont ta' l-imghax dovut għar-rigward ta' dejn bħal dan jew obbligu iehor bħal dak jaqbeż l-ammont tal-kapital dovut fir-rigward ta' dejn jew obbligu bħal dak.

(6) L-ebda qorti jew tribunal ta' arbitraġġ ma jista' jagħti jew jippermetti ebda moratorju jew twaqqif, ikun kif ikun, b'konnessjoni ma' mezz ta' *securitisation*.

Setgha għall-hruġ ta' regolamenti.

23. (1) Il-Ministru jista', b'parir ta' l-awtorità kompetenti, jagħmel ir-regolamenti li jistgħu jkunu mehtieġa biex jagħti effett lil kull wahda mid-disposizzjonijiet ta' dan l-Att u jista' jemenda jew jirrevoka dawk ir-regolamenti.

(2) Regolamenti magħmula taht id-disposizzjonijiet ta' dan l-Att jistgħu jsiru bil-lingwa Ingliża biss.

Applikabbiltà ta' dan l-Att.

24. Dan l-Att għandu japplika biss għal *securitisation* jew operazzjonijiet ta' *securitisation* meta:

(a) il-valur ta' l-operazzjoni ta' *securitisation*, jew

(b) il-valur ta' l-istrumenti finanzjarji mahruġa mill-mezz ta' *securitisation* jeċedi dak il-valur minimu li jidher f'avviż mahruġ mill-awtorità kompetenti minn żmien għal żmien, jew

(ċ) meta operazzjoni ta' *securitisation* speċifika tkun giet xort'ohra approvata bil-miktub mill-awtorità kompetenti.

25. F'dan l-Att u fir-regoli maghmulin bis-sahha tiegħu, jekk ikun hemm xi konflitt bejn it-test Inġliż u dak Malti, ikun it-test Inġliż li jipprevali.

It-test Inġliż għandu jipprevali.

TAQSIMA VI

EMENDI TA' LIĠIJET OHRA

26. Minnufih wara l-artikolu 1996 tal-Kodiċi Ċivili, għandu jidhol dan l-artikolu 1996A ġdid li ġej:

Emenda konsegwenzjali tal-Kodiċi Ċivili, Kap. 16.

1996A. Kreditur jista' jiftiehem li jiċċahhad, iċedi jew b'mod iehor jimmodifika d-drittijiet tal-hlas, inforzar, gradazzjoni u drittijiet ohra simili għar-rigward tad-drittijiet ta' kredituri ohrajn u kull ftehim bħal dak għandu jkun jorbot fuq il-partijiet tal-kuntratt, kemm qabel kemm wara l-insolvenza ta' xi parti fil-kuntratt.”

“Dritt tal-kreditur li jimmodifika d-drittijiet tiegħu nnifsu.

27. Minnufih wara l-artikolu 84B ta' l-Att dwar il-Kumpanniji, għandu jidhol dan l-artikolu 84C ġdid li ġej:

Emenda konsegwenzjali ta' l-Att Dwar il-Kumpanniji, Kap. 386.

84C. (1) Il-Ministru, b'konsultazzjoni mal-Ministru responsabbli għall-finanzi u bil-parir ta' l-awtorità kompetenti taht l-Att dwar is-*Securitisation*, jista' jagħmel regolamenti li jipprovdu dwar il-formazzjoni, il-kostituzzjoni, l-awtorizzazzjoni u r-regolamentazzjoni ta' kumpanniji ċellulari, u li jagħmluha possibbli għal mezz ta' *securitisation* li jikkonverti f'kumpannija ċellulari, u dwar kull haġa ohra li tista' tinqala' b'konnessjoni ma' dan.

“Il-Ministru jista' johroġ regolamenti relatati mal-mezzi ta' *securitisation*.

(2) Biex id-disposizzjonijiet ta' dan l-artikolu jkunu jistgħu jitwettqu ahjar, u minghajr preġudizzju għall-generalità ta' dak hemm qabel imsemmi, il-Ministru filwaqt li jkun qed jaġixxi kif hawn qabel imsemmi, jista', b'dawk ir-regolamenti, u b'mod partikolari:

(a) jagħmel provvedimenti dwar il-kontenut tal-memorandum u l-istatut tal-kumpannija ta' kumpannija ċellulari, inklużi provvedimenti għal holqien minn kumpannija ċellulari ta' ċellula waħda jew aktar, u għas-segregazzjoni u l-protezzjoni ta' l-assi ċellulari u assi ohrajn tal-kumpannija, u li jstabbilixxu htigiet ohrajn ta' rappurtar u żvelar;

(b) jeżenta jew jipprovdi għall-eżenzjoni ta' dik il-kumpannija minn xi jew kull disposizzjoni ta' dan l-Att jew xi liġi oħra li tkun fis-seħh, bla hsara għal dawk il-modifiki, varjazzjonijiet u kundizzjonijiet li jistgħu jkunu speċifikati;

(ċ) jagħmel provvedimenti dwar il-mod u l-forma kif kumpannija ċellulari tista' tohloq u tohroġ ishma ċellulari, u jagħmel kull provvediment dwar l-assi ta' kumpannija ċellulari, inkluża l-htieġa li l-assi ta' kumpannija ċellulari għandhom ikunu ta' klassi jew deskrizzjoni speċifikata, jew kull htieġa oħra dwar il-kwalità, in-natura jew l-ammont ta' dawk l-assi;

(d) jagħmel provvedimenti li jkunu jippermettu li ċelluli jew assi ċellulari attriwiċċbli għal xi ċellula ta' kumpannija ċellulari jkunu trasferiċċbli lil xi persuna oħra;

(e) jagħmel provvedimenti biex ċelluli individwali jiġu kkunsidrati bħala entitajiet separati u distinti għal dawk l-għanjiet skond ma jista' jiġi stabbilit;

(f) jipprovdi dwar kull haġ' oħra konsegwenzjali, inċidentalment jew haġ' oħra konnessa ma' xi haġa minn dawk qabel imsemmija.

(3) Għall-finijiet ta' dan l-artikolu, "mezz ta' *securitisation*" għandha l-istess tifsira mogħtija lilha fl-Att dwar is- *Securitisation*".

Għanjiet u Raġunijiet

L-għan ta' dan l-Abbozz hu biex jipprovdi għal *securitisation* u biex jintroduċi regoli ġodda dwar il-mezzi ta' *securitisation*.

**A BILL
entitled**

AN ACT to provide for securitisation, to regulate existing laws in support of securitisation and to introduce new rules on securitisation vehicles.

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:-

PART I

GENERAL

1. (1) The short title of this Act is the Securitisation Act, 2003. Short title and commencement.

(2) This Act shall come into force on such date as the Minister responsible for finance may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes of this Act.

2. In this Act, unless the context otherwise requires:- Interpretation.

“the competent authority” means the body appointed by Order of the Minister to be published in the Gazette, to carry out the functions of the competent authority under this Act and to perform such other functions as the Minister may consider appropriate in relation to the operation of this Act;

Cap. 345.

“financial instruments” has the same meaning assigned to it by the Financial Markets Act;

Cap. 386.

“investment company” means an investment company with fixed share capital or an investment company with variable share capital, which respective terms shall have the same meaning respectively assigned to them in the Companies Act;

“the Minister” means the Minister responsible for finance;

“originator” or “assignor” means a person, including Government or any Local Council, who in a securitisation transaction:

(a) transfers by any means securitisation assets to a securitisation vehicle, or

(b) enters into any arrangement with a securitisation vehicle for the purpose of transferring any risk in whole or in part to the securitisation vehicle, or

(c) obtains a loan or other facility from a securitisation vehicle, such loan or facility being secured directly or indirectly over securitisation assets, and the term originator or assignor shall also include all its subsidiary undertakings or affiliates;

“receivable” means a right to receive payment of a monetary sum whatsoever, including a right to receive payment of future undetermined sums from debtors which are not yet determined;

“risks” means any risks whatsoever, including those arising from any rights relating to assets, whether movable or immovable, tangible or intangible, future or existing, risks resulting from any obligations or activities of third parties and risks arising from any event or circumstance;

“securities” has the same meaning assigned to it by the Financial Markets Act;

“securitisation” or “securitisation transaction” means a transaction or an arrangement whereby a securitisation vehicle, directly or indirectly:

- (a) acquires securitisation assets from an originator by any means, or
- (b) assumes any risks from an originator by any means, or
- (c) grants secured loan or other secured facility or facilities to an originator, and finances any or all of the above, directly or indirectly, in whole or in part, through the issue of financial instruments, and includes any preparatory acts carried out in connection with the above;

“securitisation asset” means any asset, whether existing or future, whether movable or immovable, and whether tangible or intangible, and where the context so allows, includes risks;

“securitisation creditors” means all creditors or classes of creditors of a securitisation vehicle, in relation to a securitisation transaction, whose credit is secured by any means whatsoever, whether by security collateral or title transfer collateral, including, without prejudice to the generality of the foregoing, the originator, any person holding one or more financial instruments issued by the securitisation vehicle, other than a shareholder of the securitisation vehicle, if applicable, any lender, hedge counterparty, liquidity provider and credit support provider of the securitisation vehicle and any trustee acting on any of their behalf;

“securitisation vehicle” means a vehicle as referred to in article 3 and which is established or created for the purpose of directly or indirectly carrying out a securitisation transaction;

“security collateral” means collateral provided by a collateral provider by way of security in favour of, or to, a collateral taker, and where the full ownership of the collateral remains with the collateral provider, when the security right is established;

“title transfer collateral” means collateral provided by a collateral provider, including by repurchase agreements and assignments by way of security, whereby the collateral provider transfers full ownership of the collateral to a collateral taker for the purpose of securing or otherwise covering the performance of any obligation;

“underlying debtor” means, where applicable, a person whose obligation towards an originator has been the object of a securitisation transaction;

Cap. 249.

“writing” shall have the same meaning assigned to it in the Interpretation Act and shall include facsimile transmissions and electronic mail communications.

PART II

SECURITISATION VEHICLES

Legal form of securitisation vehicle.

3. (1) A securitisation vehicle may be:

- (a) a company, including an investment company;
- (b) a commercial partnership;
- (c) a trust created by a written instrument; or

(d) any other legal structure which the competent authority may, by notice, permit to be used for a securitisation transaction,

established under the laws of Malta or those of a jurisdiction recognised by the competent authority.

(2) When a securitisation vehicle is established under this Act or any other relevant law:

(a) the objects and purposes of such vehicle shall be limited to such matters which are necessary to carry out all or any transactions intended or required to implement or participate in a securitisation transaction and all related and ancillary acts including, without limitation, the acquisition, management and collection of credits and other receivables or other securitisation assets, the assumption of risks, the granting of secured loans, the issue of financial instruments or the borrowing of funds to finance the acquisition of assets or assumption of risks, the engagement of service providers to administer or support its activities and the entering into derivative instruments; and

(b) its constitutive document shall state expressly that it is a vehicle established subject to the provisions of this Act.

Securitisation transactions.

4. (1) A securitisation transaction may take place through the use of more than one securitisation vehicle, whether established under

the laws of Malta or otherwise, and the provisions of this Act shall be construed accordingly.

(2) Securitisation vehicles may not carry on any trade or business, other than that relating or ancillary to the securitisation transaction.

5. Notwithstanding the provisions of any other law, and whatever the nature of the securitisation assets acquired or risks assumed by the securitisation vehicle, the securitisation vehicle shall not be required to obtain any licence, permit or authorisation other than as provided in this Act or in regulations made under the same Act and in particular, but without limitation to the generality of the foregoing, shall not require any licence under the Investment Services Act, the Banking Act, the Financial Institutions Act, and the Insurance Business Act. The issuing and offering of financial instruments by a securitisation vehicle shall however still continue to be governed by the relevant provisions of the Companies Act and the Investment Services Act.

Securitisation vehicle not required to obtain any licence.
(Cap. 370)
(Cap. 371)
(Cap. 376)
(Cap. 403)

6. Securitisation vehicles shall not be considered to be collective investment schemes as defined in the Investment Services Act:

Securitisation vehicles not be considered as collective investment schemes.

Provided that the competent authority may designate by notice that certain categories of securitisation vehicles shall be collective investment schemes, and in such a case the competent authority may determine the extent to which the provisions of the Investment Services Act, shall apply to the said categories of securitisation vehicles.

7. No proceedings taken in relation to the originator under the Companies Act, or any other law, including any dissolution and winding-up proceedings, any company recovery procedure, any company reconstruction and any proceedings affecting creditors' rights generally shall have any effect on:

Securitisation vehicle separate and independent from originator.

(a) the securitisation vehicle;

(b) any securitisation assets acquired or risks assumed by the securitisation vehicle, as well as any cashflow or other asset of the securitised vehicle;

(c) any payments due by the underlying debtors in connection with the securitised assets.

8. (1) The securitisation vehicle may delegate the management responsibility for the day to day administration of the securitisation

Delegation of administration duties and functions by securitisation vehicles.

vehicle or of the assets or risks thereof, including the collection of any claims, to any third party, including the originator.

(2) When such administration has been delegated by the securitisation vehicle to the originator, the latter shall not require any licence from or other recognition by the competent authority under any applicable law.

(3) Unless the agreement between the securitisation vehicle and such person specifically provides otherwise, the person delegated with such administration shall be obliged to segregate such assets from his own and those of other customers. Such segregation shall clearly identify the receivables or securitisation assets which belong to the securitisation vehicle and such person shall keep detailed records of all assets received and disposed of.

(4) Any assets held by any such third party for a securitisation vehicle shall be considered as being held on trust by such third party for the benefit of the securitisation vehicle.

PART III

THE TRANSFER OF SECURITISATION ASSETS

Transfer of
securitisation assets.

9. (1) The originator and the securitisation vehicle shall be at liberty to select any method of transferring the securitisation assets, including, without limitation, by novation, sale, assignment and declaration of trust.

(2) Subject to the other provisions of this Act, such transfer of securitisation assets from an originator to a securitisation vehicle shall be valid and enforceable in accordance with its terms and with this Act and shall not be subject to re-characterisation for any reason whatsoever.

(3) The provisions set out in this Act shall apply *mutatis mutandis* to all transfers made by an originator to a securitisation vehicle or securitisation creditors, as well as to all transfers made by a securitisation vehicle to other securitisation vehicles or securitisation creditors.

Assignments.

10. (1) When a securitisation asset is assigned to a securitisation vehicle in accordance with this Act, such assignment shall be treated as final, absolute and binding on the originator, the securitisation vehicle and on all third parties and such assignment shall not be:

(a) subject to annulment, rescission, revocation or termination, variation or abatement by any person and for any reason whatsoever;

(b) subject to any rights of the creditors of the originator for any reason whatsoever;

(c) subject to any rights of a liquidator, provisional administrator, receiver, curator, controller, special controller of the originator or other similar officer of the originator for any reason whatsoever.

(2) The provisions of subarticle (1) hereof shall apply notwithstanding any underlying contractual or statutory prohibition or restriction on the originator to assign in whole or in part the securitisation asset to any third party. The Minister, acting on the advice of the competent authority, may by notice declare types of contracts to which this provision shall not apply.

(3) The provisions of subarticles (1) and (2) hereof shall not apply:

(a) when there is fraud on the part of the securitisation vehicle, or

(b) in respect of any assignment entered into at a time at which the securitisation vehicle knew or ought to have known that an application for the dissolution and winding up of the originator by reason of insolvency was pending, or that the originator had taken formal steps under any applicable law to bring about its dissolution and winding up by reason of insolvency:

Provided that, unless the securitisation vehicle had actual knowledge of such matter, for the purposes of subarticle (2) hereof, it shall be deemed that the securitisation vehicle could not have known that an application for the dissolution and winding up of the originator by reason of insolvency was pending, or that the originator had taken formal steps under any applicable law to bring about its dissolution and winding up by reason of insolvency, if no document or other record was registered to this effect with the Registrar of Companies and was publicly accessible.

(4) In case of an assignment in favour of a securitisation vehicle, it shall not be required that the assignment have a price, or when a price is agreed, a fixed or determinate price. It shall also be lawful for the consideration to be determinable by reference to any

formula as may be agreed, or be in consideration of and in accordance with the terms of a securitisation transaction.

(5) Unless the terms of any transfer to a securitisation vehicle provides otherwise, or the securitisation vehicle expressly assumes any obligation, the underlying debtor shall have no right or claim against the securitisation vehicle in connection with any obligation relating to the securitisation assets. The underlying debtor shall continue to enjoy all rights under the assigned contract against the originator who shall remain solely responsible for the performance of all obligations thereunder.

(6) An assignment in favour of a securitisation vehicle is not valid unless it is evidenced in writing. The assignment of assets to a securitisation vehicle is complete and the ownership of the asset is *ipso jure* acquired by the securitisation vehicle as soon as the assignment is reduced to writing in accordance with this Act and the provisions of articles 1469 of the Civil Code shall not apply.

Assignment of
existing
securitisation assets.

11. (1) The assignment of a securitisation asset to a securitisation vehicle shall be valid and effective if the assignment identifies at least two of the following features of the class of receivables being subject to the assignment:

(a) the type of debt or asset or contract giving rise to the debt;

(b) the class or type of debtors;

(c) the repayment period when the debts fall due, so as to enable any interested party to reasonably determine which receivables are included in the assignment and it shall not be necessary to specify the name of the debtor or debtors, the date or the amount of any particular debt.

(2) Where the parties to an assignment claim that a debt is not included in the assignment, the matter shall be resolved as provided for in the assignment, and the aggregate price, if any, for the transfer shall be adjusted, if the claim is justified, by the value of the disputed debt being reduced therefrom, and such adjustment shall not in any way affect the validity or effects of the assignment of other receivables.

Assignment of
future receivables.

12. (1) It shall be lawful for future receivables of an originator, including future claims against future debtors, to be the subject matter of an assignment in favour of a securitisation vehicle. Such an assignment shall be valid and effective if it identifies at least one of the

features of the class of receivables being subject to the assignment from each of the Features A and Features B, listed in sub-article (2) hereof, in order to enable any interested party to reasonably determine which receivables are included in the assignment and it shall not be necessary to specify the name of the debtor or debtors, the date or the amount of any particular debt.

(2) There shall be indicated as:

Features A -

- (a) the type of debt or asset or contract giving rise to the debt;
- (b) the class or type of debtors;
- (c) the assets, including future assets, which give rise to the receivables; and

Features B -

- (a) the time period during which the debt may arise;
- (b) the repayment period when the debts may fall due.

(3) An assignment of one or more future receivables is deemed to be effective at the time of the conclusion of the original contract of assignment between the assignor and the assignee, without a new act of transfer being required to assign each such receivable on it coming into existence.

(4) A notice of assignment duly given in terms of this Act at the time of the securitisation transaction shall be valid and effective in relation to the future receivable and need not be repeated once the receivable comes into existence.

(5) It shall also be lawful for future receivables to be the subject of any security collateral or title transfer collateral.

13. (1) Notwithstanding the provisions of the Civil Code, in case of an assignment of a securitisation asset to a securitisation vehicle, the debtor will be deemed to be notified of the assignment upon one of the following events taking place at the option of the assignor or assignee: Form of notification.

- (a) on notification to the debtor in writing by any means; or

(b) on the publication of a notice as follows:

(i) in a daily newspaper circulating wholly or mainly in Malta, or

(ii) where it appears that the majority of the debtors reside outside Malta, in a daily newspaper circulating wholly or mainly in such other jurisdiction outside Malta, or

(c) where there is doubt as to where the majority of the debtors reside, in a daily newspaper which has wide international circulation.

(2) Such notification shall be effective for all the purposes and effects of the Civil Code with regard to third parties, including the debtor, as follows:

(a) if notification is made in terms of article 187 of the Code of Organisation and Civil Procedure, on the date of service and the provisions of the Code of Organisation and Civil Procedure shall determine such date of service; or

(b) if notification is made by mail, two days after despatch by mail by the assignor or assignee of the notice in writing to the debtor's last known address; or

(c) if notification is made by publication in a newspaper, the time of the opening of business in the place of publication of the notice in the newspaper; or

(d) if notification is made by any electronic means, one day after despatch of the electronic notification,

as the case may be, unless the said notice expressly mentions a later date for the effects to commence.

(3) The same rules shall apply, *mutatis mutandis*, to notifications required in relation to the pledge of securitisation assets, and article 1966 of the Civil Code shall be construed accordingly.

(4) If, during the period between the date of assignment of the securitisation assets and the notification as per the above sub-articles, the assignor shall have become insolvent, such insolvency shall not have any effect on the said assignment and any notification of the assignment made in accordance with the above sub-articles shall be valid and effective.

(5) The notice of assignment shall identify the features of the class of receivables as set out in articles 11 or 12, as the case may be.

14. (1) The following provisions of the Civil Code shall not apply in case of an assignment of a securitisation asset to a securitisation vehicle: Modification of certain provisions of the Civil Code.

- (a) articles 1483 (1);
- (b) article 1056 (1);
- (c) articles 1978 to 1984; and
- (d) article 2013 (3).

(2) The following provisions of the Civil Code shall apply subject to the modifications herein stated: Cap. 16.

(a) article 1201 shall not apply to an assignment of a securitisation asset to a securitisation vehicle. Upon notice of the assignment to the debtor in terms of this Act, all rights of set-off between the debtor and the assignor to the securitisation vehicle shall cease;

(b) article 1968(1) of the Civil Code shall not apply, and where the thing pledged to the securitisation vehicle is a debt, the securitisation vehicle shall, unless otherwise agreed with the originator, be responsible for the collection of such debt on maturity and the securitisation vehicle may place the moneys or other things received either as agreed or, failing such agreement, may hold the same as security for the debt until due;

(c) article 1968 (4) shall not apply to a pledge of a debt securing a securitisation asset assigned to a securitisation vehicle. Upon notification of the assignment in terms of this Act, the debtor of a debt given in pledge may not oppose to the securitisation vehicle any set-off between the debtor of the debt given in pledge and the originator; and

(d) without prejudice to the right of the parties to assign rights by means of public deeds and register the same in accordance with articles 2051 and 2052 of the Civil Code, when a right arising from a public deed, including any hypothecary rights, is transferred to or from a securitisation vehicle, article 1470(2) shall not apply.

(3) For the purposes of article 1475 of the Civil Code and for the purposes of a securitisation transaction -

(a) unless the assignment expressly provides otherwise, the assignment of a debt shall also include every suretyship, warranty or indemnity for the payment of the debt;

(b) the assignment of a debt shall include every suretyship, warranty or indemnity, accessory to the debt and this notwithstanding any contractual prohibition or restriction against such assignment of the debt in the contract of suretyship, guarantee or indemnity. The Minister, acting on the advice of the competent authority, may by notice declare types of suretyships, guarantees or indemnities to which this provision will not apply; and

(c) any notices of assignment made to the debtor or class of debtors in accordance with this Act, shall have effect in relation to all persons granting any suretyship, guarantee or indemnity without the need of further notice or other formalities in their regard.

The assumption of risks.

15. (1) Any and all risks can be assumed by a securitisation vehicle and securitised in accordance with this Act.

(2) The securitisation vehicle may assume risks by acquiring assets, guaranteeing or assuming obligations, entering into derivative contracts or by committing itself in any other way.

(3) Unless the parties expressly determine otherwise in writing, an assumption of risk and any hedging or derivative transaction or product entered into in the context of a securitisation transaction for whatever reason shall not be deemed to be a contract of insurance for all effects and purposes at law.

Securitisation creditors.

16. (1) Unless otherwise specifically determined in writing in the terms of issue of securities:

(a) holders of securities issued by a securitisation vehicle shall have a privilege over the securitisation assets and such privilege shall rank prior to all other claims at law, except for other securitisation creditors who enjoy a prior ranking granted to them with the consent or knowledge of the said holders; and

(b) the said privilege extends to the proceeds derived from the securitisation assets, to any funds received in payment and to the assets, if any, in which they are invested.

(2) If an acquisition vehicle is used in a securitisation transaction and such vehicle is different from the securities issuing vehicle, the said privilege shall arise over the securitisation assets of the acquisition vehicle.

(3) The said privilege arises by operation of law and does not need to be registered in any register.

(4) The conditions of issuance of any financial instruments by the securitisation vehicle shall be binding upon the securitisation vehicle, the securitisation creditors or other persons who have given their consent thereto, including in the case when the securitisation vehicle is placed under any dissolution and winding-up proceedings, company recovery procedure, company reconstruction or any proceedings affecting creditors' rights generally.

(5) It shall not be lawful for any person, other than a securitisation creditor, to demand the issuance or enforcement of any precautionary act or warrant against the securitisation vehicle, except when the court is satisfied that there has been fraud on the part of the securitisation vehicle.

17. (1) Parties to a securitisation transaction shall be free to choose any law to govern contracts relating to or ancillary to a securitisation transaction. Private International Law rules.

(2) The Minister, acting on the advice of the competent authority, may make rules on the law applicable to matters relating or ancillary to securitisation transactions, where the law of a country, other than Malta, may be applicable including, without limitation:

- (a) rules on the proper law of any contract;
- (b) formal and material validity of any contract;
- (c) rights of third parties upon the completion of any contract;
- (d) proprietary issues relating to securitisation transactions;
and
- (e) the priorities of rights of third parties.

PART IV

REGULATION OF SECURITISATION VEHICLES

Securitisation
vehicles.

18. No vehicle established under the laws of Malta shall commence business as a securitisation vehicle in or from within Malta unless it has given notice on the appropriate form to the competent authority that it intends to enter into one or more securitisation transactions.

Public securitisation
vehicles.

19. (1) For the purposes of this article:

(a) a public securitisation vehicle shall mean a securitisation vehicle which issues or which is desirous of issuing financial instruments to the public on a continuous basis; and

(b) the term “issuing financial instruments to the public” shall have the same meaning assigned to the term “offers made to the public”, as set out in article 2(3) of the Companies Act.

(2) A public securitisation vehicle shall, before issuing financial instruments to the public, apply in writing to the competent authority for a licence under this Act.

(3) All applications for a licence for public securitisation vehicles shall be in such form and accompanied by such information, and shall conform with such requirements as may be prescribed from time to time by directive and an application may only be withdrawn by written notice to the competent authority at a time before it has been granted or refused.

(4) The competent authority shall have the power to require any public securitisation vehicle to provide such information as it shall deem necessary for the purposes of determining an application for a licence or for the purposes of determining whether to restrict or revoke a licence.

(5) No public securitisation vehicle shall be granted a licence unless:

(a) the public securitisation vehicle has an adequate organisation and adequate resources to exercise its business;

(b) all persons who will effectively direct the business of the public securitisation vehicle are suitable persons to ensure its prudent management; and

(c) the public securitisation vehicle satisfies such other conditions as may be laid down by directives issued by the competent authority.

(6) The competent authority shall determine each application for a licence within one month of receipt of the application or, if the application does not comply with subarticle (2) of this article, or additional information is required, within one month of compliance with the said subsection or the furnishing of the information as the case may be, whichever be the later. In any event an application shall be determined within two months of its receipt.

(7) The competent authority shall determine an application by doing any of the following:

(a) granting a licence without conditions;

(b) granting a licence subject to such conditions as it may deem appropriate;

(c) refusing to grant a licence: and if it refuses an application it shall inform the applicant, in writing, of the reasons for the refusal.

(8) Where the competent authority for any reason fails to determine an application for a licence within the time prescribed under subarticle (6) of this article, such fact shall be deemed to constitute a refusal to grant a licence.

(9) (a) Without prejudice to any of the powers conferred on it by this Act, the competent authority may, whenever it deems it necessary, give, by notice in writing, such directives as it may deem appropriate in the circumstances; and any person to whom or to which the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive.

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

(c) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this subarticle.

(10) A licence shall automatically cease to have any effect if the holder:

(a) renounces its licence; or

(b) does not commence business pursuant to the licence within twenty-four months of its issue or within such other period of time as may be specified in the licence; or

(c) is declared bankrupt or goes into liquidation.

(11) The competent authority may impose restrictions on a licence or may revoke a licence in any of the following circumstances:

(a) if any document or information accompanying such an application for a licence or any information given in connection therewith is false in any material particular or if the holder of a licence conceals from, or fails to notify to the competent authority any document or information or change therein which it was its duty to reveal or notify under this Act; or

(b) if the holder fails to comply with any of the provisions of this Act or a directive issued thereunder or with the conditions under which the licence is granted; or

(c) if the holder is likely to become unable to meet its obligations.

(12) The competent authority shall have the power to vary or remove any restrictions imposed under the foregoing subarticle.

(13) Where the competent authority intends to restrict or revoke a licence or to vary any restriction, it shall serve written notice of its intention to the public securitisation vehicle; such notice shall specify the grounds upon which the competent authority intends to take action and shall specify a period in which the public securitisation vehicle shall be entitled to make representations to the competent authority as to why such action should not be taken. Unless the competent authority decides that the matter is urgent, it shall not impose or vary any restriction or revoke a licence before the expiry of such period.

(14) Any person who is aggrieved by a decision of the competent authority:

(a) to refuse an application for a licence;

- (b) to impose any condition on the grant of a licence;
- (c) to impose or vary a restriction;
- (d) to revoke a licence; or
- (e) by failure of the competent authority to determine an application for a licence under sub-article (7) of this article,

may appeal against the decision to the Financial Services Tribunal within such period and under such conditions as established under the Malta Financial Services Authority Act.

(15) Any person who contravenes or fails to comply with the provisions of subarticle (2) of this article, or contravenes or fails to comply with any condition, obligation, requirements, directive or order made or given under this article, shall be guilty of an offence.

(16) A person guilty of an offence under the provisions of subarticle (15) of this article shall, on conviction, be liable to a fine (*multa*) not exceeding fifty thousand Maltese liri. No proceedings for an offence under this article shall be commenced without the consent of the Attorney General.

20. (1) For the better carrying out of the provisions of this Act, the competent authority may, from time to time, issue and publish rules as may be necessary or appropriate in connection with securitisation transactions. The rules shall be binding on securitisation vehicles and securitisation creditors and other persons as may be specified therein. Rules.

(2) In addition and without prejudice to the generality of the foregoing, the competent authority may issue rules as it shall deem fit for:

- (a) the purpose of establishing conditions which need to be satisfied by a public securitisation vehicle in order to obtain a licence under this article;
- (b) the regulation of the custody of assets and financial instruments of the public securitisation vehicle; and
- (c) the purposes of requiring any periodical statements of the public securitisation vehicles.

PART V

MISCELLANEOUS

Professional
secrecy,
confidentiality and
data protection.

21. (1) No law relating to professional secrecy or confidentiality shall be construed so as to restrict or limit in any way a securitisation transaction. Any data or information which is transferred between persons within the context of a securitisation transaction shall accordingly be transferable without any restriction or limitation, although such data or information shall retain its secret or confidential status for other effects and purposes.

(2) Within the context of a securitisation transaction, in so far as obligations arising from the Data Protection Act are concerned:

(a) any transfer of personal data shall be deemed to be for a purpose that concerns a legitimate interest of the transferor and transferee of such data, unless it is shown that such interest is overridden by the interest to protect the fundamental rights and freedoms of the data subject and in particular the right to privacy; and

Cap. 440.

(b) any transfer of personal data to a third country that does not ensure an adequate level of protection within the meaning of article 27 (2) of the Data Protection Act shall not require the authorisation of the Data Protection Commissioner, where the controller provides adequate safeguards, which may result particularly by means of appropriate contractual provisions, with respect to the protection of the privacy and fundamental rights and freedoms of individuals and with respect to their exercise.

(3) For the purposes of the foregoing paragraphs, data or information which is transferred between persons within the context of a securitisation transaction shall be deemed to include data or information transferred between the originator and the securitisation vehicle, or between one securitisation vehicle and another, or between the securitisation vehicle and any person delegated with administration duties and functions, or between the securitisation vehicle and a representative of the investors, or between the originator or securitisation vehicle and any credit rating agencies, or between the originator or the securitisation vehicle and any counter-party in a derivative contract, lender, liquidity provider or credit support provider.

Miscellaneous
provisions.

22. (1) Notwithstanding the provisions of any other law, it shall be lawful:

(a) for the constitutive documents of the securitisation vehicle:

(i) to vest the power to appoint directors in any securitisation creditor or class thereof, to the exclusion of other persons;

(ii) to vest the power to demand or place the securitisation vehicle under any dissolution and winding-up proceedings, company recovery procedure, company reconstruction or any proceedings affecting creditors' rights generally, in any securitisation creditor or class thereof, to the exclusion of other persons;

(b) for the securitisation vehicle to enter into any agreement which contains provisions by which securitisation creditors or any shareholder of the securitisation vehicle, including the originator, accept to restrict or waive their right to commence the process leading to dissolution and consequential winding-up proceedings, company recovery procedure, company reconstruction or any proceedings affecting the rights pertaining to creditors generally in connection with a securitisation vehicle, or to transfer such a right to any person; and

(c) for the securitisation vehicle to enter into an agreement with the originator to the effect that the originator is given rights by the securitisation vehicle over all or part of the securitisation assets of the securitisation vehicle which may be available after payment of the securitisation creditors.

(2) The provisions of article 110(1) of the Companies Act shall not apply to the provision of financial assistance by a securitisation vehicle, unless the securitisation vehicle is constituted as a public limited liability company.

(3) Unless otherwise provided for in the constitutive documents of the securitisation vehicle, a securitisation vehicle shall have the power to issue financial instruments whose value or yield is linked to specific compartments, assets or risks, or whose repayment is subject to the repayment of other instruments, certain claims or certain categories of shares. If the acquisition vehicle is different from the issuing vehicle, the value, yield and the conditions of repayment may also be linked to the assets and the liabilities of the acquisition vehicle. Holders of such financial instruments shall enjoy the privilege arising by virtue of article 16(1) of this Act.

(4) Any contract entered into in connection with a securitisation transaction shall be valid and enforceable in accordance with its terms, and where the parties agree in writing as to the effects that will arise on the occurrence of a specified event, it shall not be necessary for either party to obtain any court judgement or declaration confirming that the specified event has occurred or otherwise.

(5) The provisions of Title XVII of the Civil Code or of any other part of the Civil Code or of any other law in so far as they limit or restrict the charging of interest and compound interest shall not apply to debts or any other obligations arising within the context of a securitisation transaction under this Act; and it shall be lawful for the amount of interest due in respect of any such debt or other obligation to exceed the amount of capital due in respect of any such debt or obligation.

(6) No court or arbitral tribunal may grant or sanction any moratorium or stay whatsoever in connection with a securitisation vehicle.

Power to make regulations.

23. (1) The Minister, acting on the advice of the competent authority, may make regulations as may be required for carrying into effect any of the provisions of this Act and may amend or revoke such regulations.

(2) Regulations made under any of the provisions of this Act may be made in the English language only.

Applicability of this Act.

24. This Act shall only apply to securitisations or securitisation transactions where:

(a) the value of the securitisation transaction, or

(b) the value of the financial instruments issued by the securitisation vehicle exceeds such minimum value as may be stated in a notice issued by the competent authority from time to time, or

(c) where a specific securitisation transaction has been otherwise approved in writing by the competent authority.

English text to prevail.

25. In this Act and in any rules made thereunder, if there is any conflict between the English and Maltese text, the English text shall prevail.

PART VI

AMENDMENTS TO OTHER LAWS

26. Immediately after article 1996 of the Civil Code, there shall be inserted the following new article 1996A: Consequential amendment to the Civil Code, Cap. 16.

“Right of creditor to modify own rights.”

1996A. It shall be lawful for a creditor to agree to subordinate, waive or otherwise modify his rights of payment, enforcement, ranking and other similar rights to the rights of other creditors and any such agreement shall be binding on the parties to the contract, whether before or after the insolvency of any party to the contract.”.

27. Immediately after article 84B of the Companies Act, there shall be inserted the following new article 84C: Consequential amendment to the Companies Act, Cap. 386.

“Minister may make regulations relating to securitisation vehicles.”

84C. (1) The Minister, in consultation with the Minister responsible for finance and acting on the advice of the competent authority under the Securitisation Act, may make regulations which provide for the formation, constitution, authorisation and regulation of cell companies, and which make it possible for a securitisation vehicle to convert into a cell company and for all matters that may arise in connection therewith.

(2) For the better carrying out of the provisions of this section, and without prejudice to the generality of the foregoing, the Minister, acting as aforesaid, may, by such regulations, in particular:

(a) make provision regarding the contents of the memorandum and articles of association of a cell company, including provision for the creation by the cell company of any one or more cells, and for segregating and protecting the cellular and other assets of the company, and establish reporting and other disclosure requirements;

(b) exempt or provide for the exemption of such company from any of the provisions of this Act or of any other law in force, subject to such modifications, variations and conditions as may be specified;

(c) make provision for the manner and the form whereby a cell company may create and issue cell shares

and to make any provision relating to the assets of the cell company, including the requirement that the assets of a cell company should be of a specified class or description, or any other requirements in respect of the quality, nature and extent of such assets;

(d) make provision allowing cells or the cellular assets attributable to any cell of a cell company to be transferable to any other person;

(e) make provision for considering individual cells as separate and distinct entities for such purposes as may be established;

(f) provide for any matter consequential, incidental to or connected with any of the above matters.

(3) For the purposes of this article, “securitisation vehicle” has the same meaning assigned to it in the Securitisation Act.”.

Objects and Reasons

The object of this Bill is to provide for securitisation and to introduce new rules on securitisation vehicles.