

I assent.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

17 th March, 2017

ACT No. X of 2017

An Act to amend the Banking Act, Cap. 371, and to provide for matters ancillary or incidental thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

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

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

Amendment of
article 2 of the
principal Act.

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

" "Additional Tier 1 instruments" means capital instruments that meet the conditions laid down in Article 52(1) of the CRR;"

(b) immediately after the definition "Banking Rule", there shall be added the following new definition:

" "BRRD" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No. 1093/2010 and (EU) No. 648/2012, as amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;"

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

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

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

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

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

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

(f) immediately after the definition "representative

office", there shall be added the following new definition:

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

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

" "Tier 2 instruments" means capital instruments or subordinated loans that meet the conditions laid down in Article 63 of the CRR;"

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

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

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

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

- (a) covered deposits;
- (b) the Scheme:
 - (i) subrogating to the rights and obligations of covered depositors in insolvency;
 - (ii) in relation to contribution/s that are due to it by the credit institution under the Depositor Compensation Scheme Regulations:

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

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

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

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

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

(a) the amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital;

(b) Tier 2 instruments;

(c) Additional Tier 1 instruments;

(d) Common Equity Tier 1 instruments."

Passed by the House of Representatives at Sitting No. 493 of the 13 th March, 2017.

ĊENSU GALEA
Deputy Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

