B 2783

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 21,169, 22 ta' Diċembru, 2023
Taqsima B

L.N. 300 of 2023

MALTA FINANCIAL SERVICES AUTHORITY ACT (CAP. 330)

Recovery and Resolution (Amendment) Regulations, 2023

IN EXERCISE of the powers conferred by article 20A and 20D of the Malta Financial Services Authority Act, the Minister responsible for the regulation of financial services, acting on the advice of the Malta Financial Services Authority and of the Resolution Authority, has made the following regulations:

Citation and Scope.

1. (1) The title of these regulations is the Recovery and Resolution (Amendment) Regulations, 2023 and they shall be read and construed as one with the Recovery and Resolution Regulations, hereinafter referred to as the the "principal regulations."

S.L. 330.09.

(2) The purpose of these regulations is to implement Article 93 of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132, to transpose the relevant provisions of Article 1 of Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC, and transpose Article 3(9) of Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU.

Amends regulation 1 of the principal regulations.

2. Immediately after sub-regulation (3) of regulation 1 of the principal regulations, there shall be added the following new sub-regulation:

"(4) These regulations shall not apply to entities that are also authorised in accordance with Article 14 of Regulation (EU) No 648/2012.".

Amends regulation 2 of the principal regulations.

3. In sub-regulation (1) of regulation 2 of the principal regulations, immediately after the definition "the Authority" there shall be added the following new definition:

""automatic acceleration" means a situation in which a covered bond automatically becomes immediately due and payable upon the insolvency or resolution of the issuer and in respect of which the covered bond investors have an enforceable claim for repayment at a time earlier than the original maturity date;".

Amends regulation 33B of the principal regulations.

4. The proviso to sub-regulation (9) of regulation 33B of the principal regulations shall be substituted by the following:

"Provided that, such powers shall be exercised in accordance with the scope, duration and conditions provided for in the relevant Maltese legislation.

Provided further that, the conditions provided for in this regulation shall be without prejudice to the conditions related to such power of suspension payment or delivery obligations.".

Amends regulation 44A of the principal regulations.

5. The proviso to sub-regulation (1) of regulation 44A of the principal regulations shall be substituted by the following:

"Provided that and notwithstanding the provision of any other law, the conditions set out in paragraphs (a) to (c) shall apply to sellers of Additional Tier 1 instruments and Tier 2 instruments when the said instruments are sold to a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU.";

Amends regulation 45I of the principal regulations.

6. In sub-regulation (5) of regulation 45I of the principal regulations, the words "regulation 45M." shall be substituted by the words "regulation 45L.";

Amends regulation 48 of the principal regulations.

7. In sub-regulation (2) of regulation 48 of the principal regulations, the words "eligible liabilities", wherever they occur, shall be substituted by the words "bail-inable liabilities";".

Amends regulation 55 of the principal regulations.

8. In paragraph (d) of sub-regulation (2) of regulation 55 of the principal regulations, the words "provided in regulation 73, when applying write-down and conversion powers to eligible liabilities.", shall be substituted by the words "regulation 44(3) amounts to more than 10 % of that class, it shall immediately assess the impact of that particular fact on the resolvability of that institution or entity, including the impact on the resolvability resulting from the risk of breaching the creditor safeguards provided in regulation 73 when applying write-down and conversion powers to eligible liabilities.".

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