

FBME's depositors guarantee process & delays

April 17, 2016

On the 9th of April 2016, the Central Bank of Cyprus (hereinafter "**CBC**") through an official announcement (hereinafter the "**Announcement**") activated, to the relief of FBME's Bank Ltd – Cyprus Branch (hereinafter "**FBME**") clients, the Deposit Guarantee and Resolution of Credit and Other Institutions Scheme (hereinafter the "**DGS**").

The DGS activates a procedure for the payment of compensation from the Deposit Guarantee Fund for Banks (hereinafter the "**Fund**") for deposits up to Euros 100,000 held in FBME and which are covered by the DGS as provided in the Law (as defined below), the Regulations (as defined below) and the Announcement. However, only two days after this positive development, the Management Committee of the Deposit Guarantee and Resolution of Credit and Other Institutions Scheme (hereinafter the "**DGS Committee**") announced possible problems and has warned on delays in out-pays due to the lack of cooperation of the FBME. As regards the repayment of deposits above Euros 100,000 the CBC has initialised liquidation procedures, but these are also being delayed due to objections / appeals by the FMBE.

Background:

The DGS was established by the Deposit Guarantee and Resolution of Credit and Other Institutions Scheme Law of 2016 (hereinafter the "**Law**"). This was done in accordance with the provisions of the Deposit Guarantee and Resolution of Credit and Other Institutions Scheme Regulations of 2016, as amended (hereinafter the "**Regulations**"). In essence, the DGS provides compensation to the depositors of Banks which have been members of the DGS and have paid their contribution to the Fund. The DGS procedure is triggered when the CBC reaches a decision, through a Court Order, that a specific bank is unable to pay its depositors. Pursuant to s. 4(a) (i) and s.10 (1) (a) of the Law and pursuant to Regulation 12, the CBC has activated the DGS for FBME and has set a procedure, as analysed below, for its proper implementation. The DGS covers all deposits at FBME, in euro or in other currencies, which belong to natural or legal persons. However, according to Regulation 7, the following deposits are some of the deposits that are exempted from payment of compensation: (a) deposits made by other banks and cooperative credit institutions on their own behalf; (b) deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering; (c) deposits by investment firms; (e) deposits by collective investments undertakings; and (f) deposits by insurance undertakings.

The procedure:

- The depositors of FBME whose deposits are covered by the DGS must submit the required information using the standardised statement of particulars at the offices of the CBC (a copy of the relevant form may be found below).
- The information provided must then be verified by the Special Administrator (appointed by CBC) of FBME.
- The main documentary evidence required, inter alia, are: (a) evidence for identification of depositors; and (b) account details for the payment of compensation.
- Depositors who will submit their statement of particulars (and provided this is accepted), will be compensated within 7 working days.
- Pursuant to Regulation 13, the DGS Committee may defer the compensation payment of a particular deposit, in the following cases, amongst others: (a) if it is uncertain whether a person is legally entitled to receive payment or the deposit is subject to dispute; and (b) if the deposit is subject to restrictive measures imposed by national governments or international bodies.
- A depositor's right to compensation shall not be forfeited until the 9th of April 2018.
- The DGS Committee shall determine the compensation amount to be paid to each depositor; an amount which cannot exceed the amount of Euros 100,000. The obligations of each depositor against FBME are taken into consideration in the calculation of the payable amount. The DGS Committee will ensure the transmission of a notification to the depositors regarding their compensation amount calculated.

The aftermath:

The depositors by submitting their request to the DGS, may not request any other claim against FBME until the DGS recovers the compensation amount from FBME. Moreover, the depositors are considered to have granted to the DGS, to the extent of the amount of their compensation payment, their claim against FBME and they are considered to have authorised the DGS Committee to act on their behalf for the implementation of the latter action. Despite this welcoming development for the depositors, there are practical issues with the implementation of the abovementioned procedure. Specifically, the DGS Committee announced on the 11th of April that the depositors are requested to go in person directly at the offices of the Central Bank of Cyprus (not to FBME's offices) and the same has warned possible delays in the pay-out procedures for the depositors. DGS has attributed the above to the lack of cooperation by FBME and to the strike declared at FBME. In contrast, the CBC's action to activate the DGS has been criticised by the FBME, as welcomed but very delayed, and it was further stated that the inability of FBME to repay its depositors resulted from the CBC's actions itself. Nevertheless, the procedures will not be halted in any case

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and the depositors of an amount up to Euros 100,000 are encouraged to initiate the abovementioned procedure.

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