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GANADO
ADVOCATES

INSURANCE AND PENSION LAW NEWSLETTER

News

Questions & Suggestions

INTRODUCTION

We are pleased to enclose our latest Insurance & Pension Law Newsletter which the Insurance and Pensions Team at GANADO Advocates has been publishing on a quarterly basis for the last decade or so. Over the years, GANADO Advocates has built a very strong and capable team of lawyers and other professionals with specialisation and depth in most aspects of insurance and private pensions law.

As we all witness both regulatory developments (on a European and Maltese level) in both insurance and private pensions, it is imperative to keep up with the wave of change and to keep well informed of such changes. The aim of this newsletter is to share ongoing developments with you as they arise from time to time and it will serve as an update on what is happening in the insurance and pensions markets.

This newsletter is targeted at directors, managers and senior officers of insurance and reinsurance undertakings, captives, cell companies, managers, brokers and other insurance intermediaries, retirement scheme administrators, occupational pension schemes as well as service providers to such regulated entities, including legal counsel and asset managers.

In particular, the newsletter will include:

- i. MFSA issues new rules under the Retirement Pensions Act, 2011; and
- ii. Consultation on Conduct of Business Rulebook.

We trust that you will find this issue of the Newsletter to be of interest.

**INSURANCE &
PRIVATE PENSIONS TEAM**

IN THIS ISSUE

3

News

6

Questions & Suggestions

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The Last Leg of Solvency II

On the 8th April 2015, the Malta Financial Services Authority (MFSA) issued the Insurance Business (Phasing-in) Regulations, 2015. These Regulations grant the MFSA power to issue approvals or permissions in relation to various matters, including group supervision, prior to the implementation of Solvency II. The Regulations consist of two stages of phasing-in with the matters listed in Regulation 3 which came into force on the 1st April 2015, whereas those listed in Regulation 4 shall apply from the 1st July 2015. Therefore insurance and reinsurance undertakings should consider which of the Solvency II approvals they may wish to use. However, the MFSA decisions or approvals in relation to both phasing-in stages will only become applicable on the 1st January 2016. This process ensures that the necessary approvals/permissions are in place on day 1 of Solvency II.

In order to supplement the above phasing-in Regulations, the MFSA has also issued a new Insurance Rule 33. This Rule came into force on the 8th April 2015 and adopts a number of European Insurance and Occupation Pensions Authority (EIOPA) guidelines which relate to the various approval processes and group supervision issues addressed by the Regulations. The majority of these EIOPA guidelines came into force on the 1st April 2015 but some will only become effective on the 1st January 2016.

SIFMA's annual Insurance and Risk Linked Securities Conference

GANADO Advocates lawyers Matthew Bianchi and Nicholas Curmi recently participated in SIFMA's annual Insurance and Risk Linked Securities Conference which was held on March 3, 2015 in New York City at the Grand Hyatt Hotel. FinanceMalta were also present and sponsored the SIFMA conference, keeping up recent efforts by the jurisdiction to raise awareness about Malta's regime for special purpose reinsurance vehicles.

FinanceMalta, in collaboration with GANADO Advocates, EY Malta and Marsh Management Services Malta, also organised an information session that was held back-to-back with the SIFMA event entitled "Why Malta? Recent Developments in Securitisation".

Matthew and Nicholas delivered presentations on Malta's securitisation offering to a wide variety of delegates that included several international investment banks and leading U.S. law firms, highlighting the unique benefits of Maltese securitisation vehicles available to originators and investors, both in the insurance-linked securities sector and for a multitude of other asset classes such as aircraft and ships (and their lease/charter party receivables). In addition to addressing the increased level of interest by originators and arrangers in Malta's securitisation regime and a spike in transactions over the past couple of years, key topics discussed included the legal framework and tax rules for Maltese securitisation vehicles and recent legislative developments, including the introduction of regulations for securitisation cell companies.

Reporting during the Preparatory Phase of Solvency II – XBRL tool

On the 11th February 2015 the MFSA issued a third circular providing guidance on preparatory measures that insurance and reinsurance undertakings should consider during this phase leading to full implementation of Solvency II in January 2016.

The circular addresses Solvency II reporting requirements during the preparatory phase. Annual reporting applies to re/insurance undertakings that represent at least 80% of

MIMA Conference 2015 Insurance Linked Securities

GANADO Advocates Dr. Matthew Bianchi recently participated in the Insurance Linked Securities Conference. The Conference was organised by the Malta Insurance Managers Association in collaboration with GANADO Advocates, MFSA and EY Malta. Professor Joe Bannister, Chairman of the MFSA opened the conference whilst Ms. Angele Galea St. John explained the authorisation process in the creation of an insurance securitisation vehicle. Special guests included Mr. Cannon, Special Counsel at Cadwalader, Wickersham & Taft LLP and Mr. Quentin Perrot, Vice President at Willis Capital Markets & Advisory. Dr. Matthew Bianchi moderated the panel discussion at the end of the conference.

The EIOPA Tool for Undertakings (‘T4U’)

The MFSA has scheduled a meeting to be held on the 22nd May 2015 to provide an update on the status of the T4U and explain further planned developments to this tool which will be carried out after August 2015.

During this meeting, the Authority will also provide an overview of the XBRL reporting process and the MFSA Web Portal that will be used during the Preparatory phase and under Solvency II.

the national market share and quarterly reporting applies to re/insurance undertakings that represent at least 50% of the national market share. Clear deadlines are indicated for these quantitative and narrative submissions.

For those undertakings falling within the above solo thresholds and who intend to use the XBRL tool ‘EIOPA T4U’ to generate the XBRL reporting, it is important to note that the MFSA circular provides the link to access the beta version of the tool.

None of the local groups are required to submit group reporting during the preparatory phase as they do not exceed the threshold of Euro 12 billion total assets established by EIOPA. However, the circular offers important guidance on reporting for different group structures under Solvency II with effect from 2016.

Last, but not least, the MFSA has provided an illustration of the calculation of Restricted Own Funds under the new tiering of Own Funds structure of Solvency II.

MFSA issues new rules under the Retirement Pensions Act, 2011

On the 7th January 2015, the MFSA issued the new Regulations and Pension Rules under the Retirement Pensions Act, with effect from 1st January 2015.

The aim of the new Pension Rules is to supplement the legal framework for the licensing and regulation of retirement schemes, retirement funds and service providers related thereto, as well as for the requirement of recognition for persons carrying on back-office administrative activities and includes more detailed regulatory requirements by which persons licensed or recognised under the Retirement Pensions Act are required to comply with.

The following Legal Notices under the Retirement Pensions Act have been published:

- LN 3 of 2015 –Special Funds (Revocation) Regulations, 2015
- LN 4 of 2015 –Retirement Pensions Act, 2011
- LN 5 of 2015 –Retirement Pensions (Transitional Provisions) Regulations, 2015
- LN 6 of 2015 –Retirement Pensions Act (Exemption) Regulations, 2015
- LN 7 of 2015 –Retirement Pensions (Control of Assets) Regulations, 2015
- LN 8 of 2015 –Retirement Pensions (Defined Benefit Retirement Schemes) Regulations, 2015
- LN 9 of 2015 –Retirement Pensions (European Passport Rights for Institutions for Occupational Retirement Provision) Regulations, 2015

Consultation on Conduct of Business Rulebook

On the 6th May 2015 the MFSA issued a consultation on the Conduct of Business Rulebook. This follows on from the initial consultation document issued in January 2014 regarding the "Proposed Conduct of Business Rules for the Enhanced Protection of Customers in Investment Services". It is also a development stemming from the establishment of the new Conduct Supervisory Unit within the MFSA and the appointment of Dr. Michelle Mizzi Buontempo as the first director of this unit as of 1st January 2015.

The Rulebook applies to persons providing investment services (excluding custodians) and to persons carrying on insurance activities, being both insurance undertakings and insurance intermediaries. It is anticipated that other regulated persons will fall within the scope of the Rulebook at a later stage.

The Rulebook is intended to determine the regulatory requirements applicable to regulated persons in relation to their conduct vis-a-vis their clients and this consultation covers the first three draft chapters which address: (1) Client Disclosure Requirements; (2) Product Governance and Oversight; and (3) Conflicts of Interest. Other Chapters of the Rulebook will be issued in due course.

The Chapters being consulted transpose the requirements of a number of directives and the relevant insurance directives are the current insurance Mediation Directive (IMD I), the proposed new Mediation Directive (IMD II) and certain provisions relating to Solvency II and corresponding Level 2 measures. Since the IMD II is still going through the dialogue process, the Rulebook may require amendment to align it to the final published IMD II Directive.

The MFSA has also included certain Guidelines issued by the European Supervisory Authorities (ESMA¹, EIOPA² and EBA³) as Rules within the Rulebook. An example are EIOPA's "Guidelines on Product Oversight and Governance Requirements for Insurance Undertakings." Where the insurance directives do not address certain areas, the MFSA has also adopted certain opinions and guidelines issued by ESMA and applied them to insurance licence holders. Conversely, certain EIOPA guidelines are applied to persons licensed under the Investment Services Act. However, the Rules do not apply in a uniform manner across all categories of regulated persons and therefore each chapter in the Rulebook indicates the applicability of the rules.

The closing date for this consultation is the 13th June 2015. The MFSA plans to publish the final Conduct of Business Rulebook once all the chapters of the proposed Rulebook have been issued for consultation to the industry. Regulated persons will be granted a transitional period to comply with the requirements emanating from this new Rulebook.

¹ European Securities and Markets Authority

² European Insurance and Occupational Pensions Authority

³ European Banking Authority

We trust that this issue of **Insurance & Pension Law Newsletter** was of interest to our readers, however, should you have any queries or suggestions to make, please feel free to contact:

Dr Matthew Bianchi at mbianchi@ganoadvocates.com or

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We will be pleased to hear from you.

Further should you wish to stop receiving the **Insurance & Pension Law Newsletter** please click **unsubscribe** on the email sending this newsletter, or by contacting mbianchi@ganoadvocates.com.

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Disclaimer

This update is not intended to impart advice; readers are advised to seek confirmation of statements made herein before acting upon them. Specialist advice should always be sought on specific issues.

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