

# Insurance & Private Pension Law Update



Issue No. 13 – December 2008

Merry Christmas and a Prosperous 2009 from the G&A Insurance & Pensions Team!

## News

### **MFSA Insurance Industry Statistics**

MFSA statistics for the insurance sector for 2007 were published at the end of October. They show an expansion of insurance business of 41% over one year. Total gross premium written from Malta in 2007 amounted to €764 million, an increase of €233 million over the previous year.

The largest volume increase was for non-life risks situated outside Malta, followed by a significant increase in life risks based in Malta.

The full results for 2007 are available on the MFSA website, at [www.mfsa.com.mt](http://www.mfsa.com.mt) under the "Insurance" heading.

### **Amendment to Financial Assistance Rules**

New rules allowing financial assistance in certain instances have now been brought into force in Malta. As a result, a private company is now capable of granting financial assistance for the acquisition or purchase of its own or its parent company's shares provided the following requirements are fulfilled:

- the Board of Directors pass a resolution to approve the grant of financial assistance, without prejudice to the duties to act in good faith and for the benefit of the Company;
- an extraordinary resolution of the Company approves the above Board resolution; and
- a declaration in the prescribed form which is signed by two directors confirming satisfaction of the items above is duly filed with the Registry of Companies. The signature of one director will be sufficient where the board is composed of only one director.

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## **Legislative Update**

### **Legal Notices**

- ▶ **L.N. 262 of 2008** – has brought amendments to the law on financial assistance into force (as reported above)
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### **MFSA Insurance and Insurance Intermediaries Rules**

- ▶ None have been published since Update No 12.
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### **European Developments**

#### **Solvency II**

In October, we reported that the European Parliament's Economic and Monetary Affairs Committee has adopted its first reading position on the Solvency II Directive, which made significant changes to the Commission's proposals in areas such as recognition of captive insurers, group supervision, group support and the calculation of capital requirements. Since then, the French Presidency has put forward an alternative text to the EU Council, which excludes the group support regime. This has led the CEA (the European federation for insurers and reinsurers) to call for an active dialogue between the EU Council, Parliament and Commission to find an agreed text.

The amendments put forward by the Parliamentary Committee in relation to the recognition of captives and the need for a special regime to take account of their particular nature currently remain in place and it appears that they are not in issue. These amendments define captive insurers as those which exclusively cover risks of an undertaking or group of undertakings to which they belong. They allow for simplified methods to be adopted in calculating technical provisions and solvency capital requirements. The text states that "the new solvency regime should take account of the specific nature of captive insurance and reinsurance undertakings" and, "as those undertakings only cover risks associated with the industrial or commercial group to which they belong, appropriate approaches should thus be provided in line with the principle of proportionality to reflect the nature, scale and complexity of their business". This is clearly a useful concession to the captive sector and it is hoped that this recognition within the draft directive will remain in place as it makes its progress through the various institutions.

We will keep a watching brief on developments in this area and report accordingly.

## Recent MFSA Authorisations & Licences

### *Insurance and Reinsurance Companies*

- ▶ **Munich Re of Malta plc** of 5<sup>th</sup> Floor, Development House, St. Anne Street, Floriana, Malta was authorised by the MFSA to carry on the business of reinsurance in three classes of long term business and 18 classes of general business.
- ▶ **RCI Insurance Limited** of 34, Regent House, Bisazza Street, Sliema, Malta was authorised by the MFSA to carry on the business of insurance in 3 classes of general business – accident, sickness and miscellaneous financial loss.
- ▶ **RCI Life Limited** of 34, Regent House, Bisazza Street, Sliema, Malta was authorised by the MFSA to carry on the business of long term business in Class I - life and annuity.

### *Protected Cell Companies*

- ▶ **Axeria Re Life International PCC Limited** of 80 Mill Street, Qormi, Malta was authorised by the MFSA to carry on the business of insurance from Malta. A cell of Axeria Re Life International PCC Limited, the **Income Protection Cell**, has been approved to carry on the business of insurance in two classes of general business and two classes of long term business.

### *Redomiciliations*

- ▶ **White Rock Insurance (Europe) PCC Limited** of Floor 2, 53 Abate Rigord Street, Ta' Xbiex was authorised by the MFSA to carry on the business of insurance in and from Malta in 5 classes of general business. This authorisation is the end result of the first effective redomiciliation of a Protected Cell Company ever to have taken place.

## Articles

### ***QROPS in Malta***

A Qualifying Recognised Overseas Pension Scheme (QROPS) established in Malta is a pension scheme registered in Malta that has been approved by Her Majesty's Revenue and Customs (HMRC) in the UK to accept transferred funds from existing UK schemes. The scheme will be subject to the laws and regulations of the Maltese jurisdiction allowing contributors to enjoy the flexibility of a scheme established outside of the UK system. However, the scheme will still offer a high degree of security as it must meet the high standards established by the HMRC and the Maltese regulatory authorities.

#### *Establishing a QROPS in Malta*

A retirement scheme in Malta can be established by way of either a trust or a contract to the satisfaction of the Malta Financial Services Authority (MFSA). If the scheme is established by way of a trust (as is usually the case) a trustee will need to be appointed to act, either by way of a full trustee license or a license limiting their activities to the administration of the retirement scheme.

Once the scheme is established in Malta, an application then needs to be made by the scheme administrator to the UK Board of Inland Revenue for approval of the scheme as a QROPS in light of the UK Finance Act 2008.

The UK legislation requires that a retirement scheme needs to be regulated in the country where it is established by an appropriate body that will ensure that the scheme is administered soundly in order to protect the interests of its members. The legislation also requires that the scheme is recognised for tax purposes in the country where it is established. Both of these requirements are satisfied by the laws and regulations in Malta that deal with retirement schemes.

#### *Licensing Retirement Schemes*

An application for registration must be filed with the MFSA, which must be accompanied by a copy of the scheme document or trust deed, the applicable fees and any other information or particulars the MFSA may require. A scheme administrator and if necessary, an asset manager or custodian (as discussed below) will also need to be registered with the MFSA. An auditor will need to be appointed in accordance with MFSA requirements and in the rare case of a defined benefit schemes, an actuary.

#### *The Scheme Administrator*

A retirement scheme must appoint a retirement scheme administrator to perform the day to day duties of operating the scheme. In the case of a scheme established by way of trust, the scheme administrator may also be the trustee of the scheme.

### *The Asset Manager*

An asset manager will need to be appointed to a retirement scheme in circumstances where the retirement scheme administrator does not have investment services expertise in-house. It is the asset manager's role (if appointed) to manage the investment portfolio of the scheme.

### *The Custodian*

The MFSA may require the appointment of a custodian to a retirement scheme. This may occur if a retirement scheme does not invest its members' contributions in a retirement fund or funds, while at the same time not engaging the services of an asset manager.

### *Maturity of Retirement Schemes*

Upon maturity, it is necessary for a personal retirement scheme to offer a beneficiary the option of a payout in the form of an annuity, however the benefit may also be paid out in the form of a lump sum. The details of the timing and amount of distributions are to be specified in the retirement scheme document.

### *Conclusion*

By providing individuals with the ability to make the most of their retirement funds, but still subjecting schemes to a high standard of regulation, Malta is a highly desirable destination for the establishment of a QROPS within the European Union.

Please consult our website for more information in relation to establishing a QROPS in Malta.

## ***Queries and Suggestions***

We trust that this issue of *Insurance & Private Pension Law – Update* 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@jmganado.com](mailto:mbianchi@jmganado.com) or **Dr. David Borg Carbott** at [dbcarbott@jmganado.com](mailto:dbcarbott@jmganado.com). We will be pleased to hear from you.

Further should you wish to stop receiving the *G&A Insurance & Private Pension Law Update* please let us know by contacting [mbianchi@jmganado.com](mailto:mbianchi@jmganado.com) or [dbcarbott@jmganado.com](mailto:dbcarbott@jmganado.com).

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