

Insurance & Private Pension Law Update



Issue No. 15 – June 2009

Welcome to Issue No. 15 of the G&A Insurance and Private Pension Law Update

News

Malta Financial Services Authority Publishes 2008 Annual Report

The MFSA has released its annual report for the financial year ending 2008 with the figures showing a high level of growth in Malta's insurance sector. According to the report, between 2004 and 2008 the insurance sector grew from 12 domestic insurance companies servicing the local market to 41 insurance companies providing insurance services across 27 EU countries and beyond.

Gross premium written between 2004 and 2007 grew by 335% to €508.8 million at the end of 2007 which is a remarkable achievement by the industry. A copy of the report is available for download from the MFSA's website (www.mfsa.com.mt).

Increase in European Union MGF and Own Funds Requirements

In line with the relevant EU insurance directives (Life, Non-Life and Reinsurance), the European Commission has concluded its annual review of the Euro amounts in the directives and concluded that such amounts need raising in line with the European index of consumer prices.

Accordingly, the MGF and Own Funds for EU authorised Insurers have been increased from €2.2m and €3.2m to €2.3m and €3.5m (depending on the classes of business carried out) and those for EU authorised Reinsurers from €3m and €1m (for captive reinsurers) to €3.2 and €1.1m respectively. The MFSA has indicated that these changes will be transposed with effect from 1st January, 2010.

See *Articles and In Depth Analysis* below for further information.

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Institute of Legal Studies Organises Captive Insurance & PCCs Course

Throughout the first half of this year, G&A's Institute of Legal Studies has delivered a course on Captive Insurance and Cell Companies. Speakers included not only G&A lawyers but also leading practitioners from the insurance industry in Malta, bringing together a wide range of expertise and experience. Topics covered included the roles and responsibilities of directors, the compliance officer and money laundering reporting officer; the role of the insurance manager; managing captives and cells in cell companies; underwriting and reinsurance considerations; and accounting and solvency issues. Smaller workshops were also held to discuss more in depth issues. Due to the success of the course the ILS will be scheduling a repeat at a date to be set later in the year. Please visit ILS's website (www.ils.com.mt) for further information.

Legislative Update

Legal Notices

A. Insurance

▶ **L.N. 128 of 2009 – Insurance Intermediaries (Exemption) (Amendment) Regulations, 2009**

This legal notice came into force on 30th April 2009 and amends the Insurance Intermediaries (Exemption) Regulations to exclude the activities of introducers from the scope of the Insurance Intermediaries Act. This amendment and the nature and activities of Insurance Introducers were the subject of a G&A Insurance Compliance Bulletin issued on 21st April, 2009 a copy of which is available upon request.

▶ **L.N. 145 of 2009 – Insurance Business (Approved Auditor) (Amendment) Regulations, 2009**

This legal notice came into force on 15th May 2009 and amends the Insurance Business (Approved Auditor) Regulations to *inter alia* align same with the changes in terminology introduced by the Insurance Intermediaries Act.

▶ **L.N. 146 of 2009 – Insurance Business (Continuance of Companies Carrying on Business of Insurance) (Amendment) Regulations, 2009**

This legal notice came into force on 15th May 2009 and amends the Insurance Business (Continuance of Companies Carrying on Business of Insurance) Regulations to *inter alia* align same with the changes in terminology introduced by the Insurance Intermediaries Act.

B. Pensions

▶ **L.N. 167 of 2009 – Special Funds (Regulation) Act (Retirement Schemes Exemption) Regulations, 2009**

These Regulations came into force on 5th June 2009 and act to exempt certain types of retirement schemes from the definition of a “Scheme” under the Special Funds Act thus excluding same from the requirements of the Act.

Retirement schemes included in the exemption are those that were already subject to a specific law which was enacted before the Special Funds Act came into force and/or schemes that had been established before the Special Funds Act came into force and are not open to new members or are in the process of closing down.

MFSA Insurance and Insurance Intermediaries Rules

▶ **Insurance Rule 7 of 2009 – Separate Management of Long Term Business and General Business**

Amendments to this Rule establish that the rule of separate management shall not apply to companies authorised to carry on business restricted to reinsurance.

▶ **Insurance Rule 20 of 2009 – Assistance Insurance**

Amendments to this Rule exempt insurers whose business is restricted to providing assistance for persons who get into difficulties while travelling, while being away from home or away from their permanent residence from having to be authorised under the Insurance Business Act.

▶ **Insurance Rule 27 of 2009 – Insurers’ Internal Controls**

Minor amendments to this Rule included a change in the definition of “senior manager” and the compositions of Board and Audit Committee.

The above Rules came into force on 30th April 2009 and repeal and/or substitute existing Insurance Directives.

▶ **Insurance Rule 17 of 2009 – Authorisation to Act as Approved Auditor**

This Rule came into force on 15th May 2009 and has introduced new requirements for auditors to meet before they are authorised to act as an approved auditor.

▶ **Insurance Intermediaries Rule 7 of 2007 – Code of Insurance Selling Practice**

Amendments to this Rule came into force on 30th April 2009 and require that where the MFSA compiles a report following a compliance visit to a tied insurance intermediary. It is the obligation of the intermediary to forward to the insurance principal a copy of the findings within 30 days.

▶ **Insurance Intermediaries Rule 24 of 2009 – Introducers**

This Rule came into force on 30th April 2009 and specifies the definition of an “introducer” and provides guidance as to the scope of introducer activities and the obligations of licence holders who engage their services.

European Developments

▶ Solvency II

The Solvency II framework directive has been agreed by the European Parliament and the European Council, so official adoption of the directive by the Council is now a matter of mere formality. The text of the Directive which was agreed at a meeting of the Economic and Financial Affairs Council on 5th May, 2009 after the approval by the European Parliament on 22nd April, 2009 includes the previous amendments put forward by the Parliamentary Committee in relation to the recognition of captives' special nature. This is clearly a useful concession to the captive industry.

The next step for Solvency II is for the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) to complete its public consultation on implementing measures and present its final advice. In this regard, CEIOPS has released its timetable for such consultations ([CEIOPS timetable](#)).

Recent MFSA Authorisations & Licences

Insurance Companies

- ▶ **Shield Insurance Company Limited** of Block A, Aviation Park, Vjal L-Avjazzjoni, Luqa, Malta was granted a licence by the MFSA to carry on business of affiliated insurance in 11 classes of general insurance.
- ▶ **Falcon Insurance Limited** – licence extended to carry on business of insurance and reinsurance restricted to risks situated outside Malta in four classes of general insurance and two classes of general reinsurance.

Insurance Agents

- ▶ **Elmo Insurance Agency Limited** has ceased to carry on insurance agency activities in respect of the Exeter Friendly Society with effect from 1st April 2009.

Recent MFSA Legislative Consultations

Proposals for Insurance Rules and Insurance Intermediaries Rules

During the month of May, the MFSA carried out the following consultations:

▶ **Insurance Rule 22 – Exercise of Passport Rights by European Insurance Undertakings and European Reinsurance Undertakings – Establishment**

It was proposed to amend this draft Rule so that it applies to European reinsurance undertakings in order to comply with the terms of the Siena Protocol.

▶ **Insurance Rule 23 – Exercise of Passport Rights by European Insurance Undertakings – Services**

Proposed amendments to this Rule include that where notice is communicated by a foreign authority this needs to include additional information where a European insurance undertaking intends to passport its services in the areas of legal services or assistance. It was also proposed to remove the requirement for a foreign authority to provide information relating to fiscal representatives.

▶ **Insurance Rule 24 – Exercise of Passport Rights by Maltese Insurance Undertakings and Maltese Reinsurance Undertakings – Establishment**

It was proposed to amend this Rule so that it applies to Maltese reinsurance undertakings and also to align the Rule with the requirements of the Siena Protocol. It was also proposed to amend the requirements for applications to cover motor vehicle risks in member or EEA states.

▶ **Insurance Rule 25 – Exercise of Passport Rights by Maltese Insurance Undertakings – Services**

Proposed amendments require Maltese insurance undertakings who intend to passport their services in the assistance area to provide information relating to the resources available to successfully carry out the assistance operations. It was also proposed to amend the requirements for application to cover motor vehicle risks in a member state or EEA state under the freedom of services regime.

The full text of the consultation papers is available on the MFSA website. Responses were requested by 8th June 2009.

Conferences

▶ **AM Best Captive Rating Seminar – Malta**

This event was held on the 4th June 2009 where representatives from AM Best gave a detailed presentation on the process and methodology used to rate both captives and PCCs.

▶ **European Captive Rendezvous - Luxembourg**

The 12th European Captive Rendezvous is to be held on the 16th-17th June 2009 at the LuxExpo Exhibition and Congress Centre in Luxembourg. For more information please see <http://www.rirg.com/luxembourg2009/default.aspx>.

Articles and In Depth Analysis

MGF and Own Funds Requirements for European Union Insurance and Reinsurance Companies to Increase as from 1st January 2010

The provisions of Article 30 of the EU Consolidated Life Directive, Article 17a of the First EU Non-Life Directive (consolidated) and Article 41 of the Reinsurance Directive (consolidated) provide that the amounts of the minimum guarantee fund in respect of direct life insurance, non-life insurance and reinsurance undertakings, and the premium and claims index figures in respect of non-life insurance undertakings (amongst other Euro amounts in the directives) are to be reviewed annually in order to take account of changes in the European index of consumer prices comprising all Member States as published by Eurostat. Such amounts are to be adapted automatically by increasing the base amount in euro by the percentage change in that index over the period between the entry into force of the Directives and the review date and rounded up to a multiple of €100,000. Changes below 5% do not result in an automatic adaptation. The last adaptation took place in late 2006 – vide Issue 7, January 2007 of the *G&A Insurance & Private Pension Law Update*.

The review conducted by the Commission in 2008 concluded that the percentage change during the review period (20th March, 2005 – 20th March, 2008) was of 8.34% and that since the inception of the review mechanism (2002) was 14.9% which, rounded up to the nearest €100,000, equates to:

- in respect of Insurance companies – a revised lower MGF / Own Funds Requirement of €2.3 million and higher MGF / Own Funds Requirement of €3.5 million (as opposed to the previous amounts of €2.2 and €3.2 million respectively since the review in 2005).
- in respect of Reinsurance companies – a revised MGF / Own Funds Requirement of €3.2 million, with a revised MGF / Own Funds Requirement of €1.1 million for Captive Reinsurance Undertakings (as opposed to the previous amounts of €3 and €1 million respectively).
- Furthermore, the revised premium index is of €57.5 million and a revised claims index of €40.3 million respectively (as opposed to the previous amounts of €53.1 and €40.3 million since the review in 2005).

As a result of the above, The Insurance Business (Assets and Liabilities) Regulations, 2007 and Insurance Rule 1 of 2007 – Own Funds of Companies Carrying on Business of Insurance will be amended later this year to reflect these increases. The MFSA has indicated by means of an information note dated 2nd April, 2009 that these amendments and increased MGF / Own funds amounts are to come into force on the **1st January, 2010**.

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 or **Dr. David Borg Carbott** at 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 or dbcarbott@jmganado.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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