

Insurance & Private Pension Law Update



Issue No. 12 – October 2008

Welcome to Issue No. 12 of the G&A Insurance and Private Pension Law Update

News

New European Captive Association Seeks Special Captive Status Under Solvency II

A new European captive association, called ECIROA, has been formed with the intention of seeking to clarify the special status of captives under Solvency II, following the fourth Quantitative Impact Study (QIS4).

The founders of ECIROA were involved in formulating a position paper arguing for a solvency framework that is proportional to captives' requirements. The association's first objective will be to present the fundamental ideas behind the position paper to various regulators, the European Commission and the Committee of European Insurance and Occupational Pensions Supervisors.

Membership is open to European companies that own a captive. The Malta Insurance Managers Association has been in contact with ECIROA and intends to work together with it in ensuring that the Maltese captive point of view is put across to the European Commission.

Malta Financial Assistance Rules to be Amended

Amendments to the law on financial assistance have been issued by means of amendments to the Companies Act made under the Accountancy Profession Act. These amendments are not yet in force but their effective date is expected to be announced soon. Under the forthcoming regulations, the situation in Malta will change to introduce a 'whitewash' procedure that will allow undertakings to provide financial assistance in prescribed circumstances.

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■ 171 & 176, OLD BAKERY STREET, VALLETTA VLT 09, MALTA
Tel: (+356) 2123 5406
Fax: (+356) 2122 5908

■ 57, ST. CHRISTOPHER STREET, VALLETTA VLT 08, MALTA
Tel: (+356) 2124 7902
Fax: (+356) 2124 0550

a.o.h.: Tel: (+356) 9947 3966
E-mail: lawfirm@jmganado.com
Web: www.jmganado.com

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Legal Notices

- ▶ Legal Notice 181 of 2008 – **Access to Goods and Services and Their Supply (Equal Treatment) Regulations, 2008** (came into force on 1st August 2008)

LN 181 of 2008 transposes Council Directive 2004/113 implementing the principle of equal treatment between men and women. The regulation makes it unlawful to discriminate whether directly or indirectly on the grounds of sex or on grounds related to pregnancy or maternity.

Specifically in relation to insurance, regulation 5 provides the following:

- (1) *the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in the premiums and benefits relating to an individual except in those cases where the use of sex is a determining factor in the assessment of risk, and only if the resulting differences in the premiums and benefits relating to an individual are proportionate, and where this assessment is based on relevant and accurate actuarial statistical data.*
- (2) *Providers of insurance and related financial services who use such a determining factor shall file an annual notification to such effect with the National Commission for the Promotion of Equality of Men and Women.*
- (3) *Such notifications shall include the following details:*
 - (a) *the name of the service provider;*
 - (b) *the product or service in relation to which the notification is being filed;*
 - (c) *the rationale as to why the use of sex is a determining factor; and*
 - (d) *the actuarial statistical data on which this rationale is based.*

MFSA Insurance and Insurance Intermediaries Rules

- ▶ Amendments to the Schedule to Insurance Intermediaries Rule 1 of 2007 – **Own Funds of Persons Enrolled in the Agents List, Managers List or Brokers List Carrying out Insurance Intermediaries Activities** (came into force on 1st September 2008).
- ▶ Amendments to Appendix I of Insurance Intermediaries Rule 12 of 2007 – **Scheme of Operations Relating to Enrolment in the Agents List, Managers List or Brokers List and the Application for Enrolment** (came into force on 23rd July 2008)
- ▶ Insurance Rule 8 of 2008 – **Qualifications of Responsible Individuals** (came into force on 1st October 2008);
- ▶ Insurance Rule 14 – **Insurance Advertisements and Other Promotional Activities** (came into force on 1st October 2008);

- ▶ Insurance Intermediaries Rule 5 – **Insurance Intermediaries Advertisements and Other Promotional Activities** (came into force on 1st September 2008); and
- ▶ Insurance Intermediaries Rule 23 – **Insurance Intermediaries carrying out Insurance Intermediaries Activities through the Internet** (came into force on 1st September 2008).

The new rules, feedback statement and notes for information are available on the MFSA website – www.mfsa.com.mt

Recent MFSA Authorisations & Licences

Insurance Companies

- ▶ **Nissan International Insurance** of 2 Portomaso Marina, St Julians, Malta was granted a licence by the MFSA to carry on business of insurance restricted to risks situated outside Malta in respect of general business in the following classes: Other Damage to Property and Miscellaneous Financial Loss.

Licence Extensions

- ▶ **Palatina Insurance Ltd** of Floor 1, Strand Towers, 36 The Strand, Sliema, Malta was granted an extension by the MFSA on their existing licence to cover motor vehicle liability.

Recent MFSA Legislative Consultations

Insurance Intermediaries (Introducers) Regulations, 2008

During August, MFSA carried out a consultation exercise in relation to the introduction of a regime to allow insurance companies, insurance agents and insurance brokers to appoint “introducers”. Draft regulations had previously been circulated and consulted up on, but the exercise was put on hold pending the implementation of the Insurance Intermediaries Act. The current draft regulations had been updated and amended following the first consultation exercise.

G&A provided feedback on the draft regulations to MFSA in conjunction with the Association of Insurance Brokers. The intention to allow the appointment of introducers was very much welcomed by the industry. However, we provided some comments on the draft Regulations that we hoped would help to ensure that the regime introduced in Malta would be proportionate to the risk posed by the activities of introducers.

The main concern raised was that the draft Regulations were unnecessarily restrictive and could be broadened to allow further flexibility whilst maintaining the necessary controls to ensure effective consumer protection. First, we felt that it was unnecessary for introducers

to have formal written contracts, second, they should be able to provide limited product information to potential policyholders and third, they should be able to work for a group of connected insurance companies, rather than being restricted to just one company.

The insurance brokers' industry response pointed out these concerns and provided detailed proposals for implementing the suggested changes. The consultation process ended on 29th August and we now await feedback from MFSA.

Recent Court of Appeal Decision

Paris Francis et vs Maltacom p.l.c.

On the 7th July 2008, the Court of Appeal presided over by Mr. Justice Joseph D. Camilleri, Mr. Justice Joseph A. Filletti and Mr. Justice Gino Camilleri, handed down judgement in the case of Paris Francis et vs Maltacom p.l.c. (now GO p.l.c.) (*Citazzjoni Numru. 480/2002/01*).

In the 1970s, the Malta Government nationalised several companies and, in this case, agreed with over 100 Cable & Wireless employees that, as part of the exercise, they would receive pension benefits. The name and status of the company has changed several times since then. Cable and Wireless was absorbed by Telemalta, which subsequently became Maltacom p.l.c., was partly privatised and finally became GO p.l.c.

The original Cable & Wireless employees filed an action against Maltacom in April 2002 alleging that Telemalta, and subsequently Maltacom, had failed to fulfil their obligation to implement the promised pension scheme and asked the Court to fix a short period within which Maltacom be ordered to implement the scheme as originally agreed upon.

The Court of Appeal judgment reviewed the judgment of the First Hall of the Civil Court which previously held that only 35 ex-employees were entitled to a pension, namely those who retired before the 1st October 1992, when a new collective agreement was signed, an agreement which did not provide for pension benefits in any form.

The First Hall held that the signing of the new collective agreement cancelled out the original collective agreement by novation and therefore those employees still in service at the time were no longer entitled to the pension agreed to previously.

However, the Court of Appeal disagreed with the First Hall and held that no novation took place as the subsequent collective agreements did not extinguish the old obligation. The Court explained that the intention of the parties to create a new obligation in favour of the old one was not present, especially since there was no specific agreement clearly and explicitly extinguishing the pension scheme clause in the previous agreement.

Therefore, as there was no novation, even those employees who were still in service after the 1st October 1992 were entitled to their pensions. As a result of the Judgement there are now 135 ex-employees entitled instead of the 35 previously established by the First Hall Judgement.

The Court of Appeal thus condemned GO p.l.c. to implement a pension scheme in favour of all of the plaintiffs on the basis of the 1975 agreement, to be considered as if such scheme came into operation on the 1st January 1975.

The Court held that the 1975 agreement stated in a clear and unequivocal manner that the Pensions Ordinance was to form the basis for the parameters and form of the pension scheme and therefore ordered that the scheme be based on such Ordinance, saving any modifications agreed upon, and also held that the scheme be non-contributory and that the amount of the pension be set at a maximum of two thirds of the last salary of the employee concerned.

The Court ordered that the scheme be established within 3 months of the date of judgment.

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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Contributors

- Dr. Matthew Bianchi
- Dr. David Borg Carbott
- Mrs. Eleanor Charlton
- Mr. Nick Curmi

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