

Insurance & Private Pension Law Update



Issue No. 23 – July 2011

Welcome to Issue No. 23 of the G&A Insurance and Private Pension Law Update

News

Solvency II delay proposed

The Council of the European Union has proposed to delay the final Solvency II deadline until January 1, 2014. The proposal suggests that Solvency II's legal requirements for regulators should not be transposed into national law until March 31, 2013.

MIMA 2011 Survey Results

The Malta Insurance Management Association issued the results of its annual survey.

As at the end of last year, the insurance management industry was responsible for overseeing the operations of 11 pure affiliated or captive insurance companies, 30 third party writers for international groups, and 12 cells.

Total gross premium amounted to in excess of €1.25 billion, whereas total cash and investments balance for all entities under management now stands at €1.1 billion.

Entities under management paid €80 million in tax to local authorities, up from €45 million the previous year and from €20 million in 2008.

Malta Association of Retirement Scheme Practitioners Launched

The first meeting of the newly formed Malta Association of Retirement Scheme Practitioners was held on the 5th of July 2011 at 1600 hours at our offices in Old Bakery Street, Valletta.

The Association brings together those entities licensed by the MFSA to act as Retirement Scheme Administrators

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News (Continued)

(RSAs) in terms of the Special Funds (Regulation) Act 2002, and aims to safeguard the interests of licensed RSAs whilst promoting and enhancing expertise on retirement and pension products generally.

The Association is currently calling upon all Retirement Scheme Administrators to become members. Any interested persons should contact the Association's Secretary General, Dr. Matthew Brincat on mbrincat@imganado.com.

EU Insurance Guarantee Scheme

The European Commission is considering legislation to ensure that Insurance Guarantee Schemes (IGS) exist in all Member States. While a minimum protection on a European level is in place in the Banking and Securities sectors with the Deposit Guarantee Scheme (1994) and the Investor Compensation Scheme (1997), no such common European framework exists in the Insurance sector. The purpose of the IGS is to provide last-resort protection to consumers when insurance undertakings are unable to fulfil their contractual obligations in the event of a claim. Malta already has a Protection and Compensation Fund in place that fulfils a dual function: the payment of claims or commitments in Malta that remain unpaid if an insurer becomes insolvent and the payment of compensation for victims of road traffic accidents without insurance recovery.

In its White Paper the Commission advocates the establishment of an IGS in each Member State that covers both life and non-life insurance policies. Since covering all natural and legal persons might be excessively costly, the Commission favours criteria restricting claimants of the IGS to natural persons and small undertakings. Funding of the IGS by insurance undertakings should be determined according to their individual risk profiles and on the basis of ex-ante contributions. The Commission is expected to issue a legislative proposal on the EU IGS in the coming months.

European Commission urges Malta to encourage private pensions

On the 7th of June 2011, the European Commission published its recommendations for a Council Recommendation on the National Reform Programme for 2011 submitted by Malta.

Following its assessment of the National Reform Programme submitted by the Maltese Government earlier during the year, the Commission is encouraging action to ensure the sustainability of the pension system by accelerating the progressive increase in the retirement age and by linking it to life expectancy.

Moreover, the higher statutory retirement age should be accompanied by a comprehensive active ageing strategy. More importantly for pensions service providers, the use of early retirement schemes, used repeatedly in the past years, should be discouraged and private pension savings encouraged.

It is thought that such recommendations may lead to the much awaited reform in Malta's tax and social security regime which should prompt private pensions service providers to offer their products on the local market.

Insurance Mediation Directive 2 (IMD 2)

On the 27 Feb 2010, the EU Commission requested CEIOPS for advice for the review of IMD 1 which regulates the operation, establishment and freedom to provide services of EU insurance intermediaries. The EU Commission Consultation Document was published in November 2010 and the Commission following a consultation period is considering options with a view to issuing a legislative proposal in late 2011.

The main elements of the Commission proposals are a higher level of policy holder protection, the management of conflicts of interest and transparency, clearer provisions on the scope of the IMD, increased efficiency in cross-border business and a higher level of professional requirements.

Legislative Update

Rules on Programmed Withdrawal Arrangements, inserted in a new 'Part B' on the Standard Operational Conditions (S.O.C. 1.7.1 to 1.7.7) in the Directives for Occupational Retirement Schemes, Retirement Funds and Related Parties under the Special Funds (Regulation) Act, 2002.

L.N. 117 of 2011: INSURANCE BUSINESS ACT (CAP. 403) - Protection and Compensation Fund (Amendment) Regulations, 2011;
Government Gazette of Malta No. 18,725 - 9.03.2011

L.N. 154 of 2011: MALTA FINANCIAL SERVICES AUTHORITY ACT (CAP. 330) - Malta Financial Services Authority (Control of Offshore Insurance Business) (Revocation) Regulations, 2011;
Government Gazette of Malta No. 18,736 - 21.04.2011

Bill No. 79 entitled the Various Financial Services Laws (Amendment) Act, 2011;
Government Gazette of Malta No. 18,749 - 13.05.2011

Recent MFSA Authorisations and Licenses

New Licenses issued

Retirement Schemes

Certificate of Registration issued to **The Westerby International Retirement Plan.**

Certificate of Registration issued to **Momentum Malta Retirement Fund.**

Retirement Scheme Administrator

Certificate of Registration issued to **Momentum Pensions Malta Limited.**

Insurance Companies

License issued to **SN SecureCorp Insurance Malta Limited** to carry on business of insurance in 3 lines of general business.

Protected Cells

A16 has been approved as a cell of **White Rock Insurance (Europe) PCC Limited**.

Enrolment of Insurance Manager

STM Malta Insurance Management Limited has been granted enrolment in the Managers List.

Solvency II Watch

EIOPA publishes Second European Insurance Stress Tests Results

European insurers were given a clean bill of health following European-wide stress tests carried out by EIOPA.

The stress tests show the effect of the new Solvency II rules on the capital of insurance undertakings in various scenarios.

Of note, 10% of insurance undertakings and groups surveyed showed a breach of their Minimum Capital Requirements ('MCR') in the adverse scenario while 8% of undertakings breach their MCR in an inflation scenario.

Following recent international developments, EIOPA decided to include a sovereign debt exposure scenario in a separate test. The results of the test show that 5% of the undertakings would be unable to satisfy MCR requirements should adverse conditions in the sovereign debt market occur.

On 5th May 2011 the European Commission published the Summary of Responses to the Consultation on the Level 2 Implementing Measures for Solvency II

The scope of the consultation was to obtain input on the impact of the implementing measures on insurance markets, insurance products and consumers and on the wider social or economic environment. The responses show that stakeholders' concerns relate to a small number of key issues, namely the impact on long-term products, volatility and pro-cyclicality, proportionality and limiting the reporting burden and the need for transitional measures in certain areas. The Commission Services have set up working parties to develop solutions to several of these issues. The responses together with the results of the fifth quantitative impact study (QIS5) will serve as input when preparing the impact assessment, which will accompany the Commission's proposal for the level 2 implementing measures.

The summary can be found at:

http://ec.europa.eu/internal_market/consultations/2010/solvency-2_en.htm

Captive Report on QIS5 issued by the European Captive Insurance and Reinsurance Owners` Association (ECIROA)

The ECIROA has released the results on its study on QIS 5 results in relation to Captives. Among the countries involved in the report are Malta, Luxembourg, Ireland and Gibraltar. The report includes data on the distribution of the Solvency Capital Requirement (SCR) coverage by country.

The presentation on the report may be found at:

<http://www.eciroa.org/wp/wp-content/uploads/2008/09/ECIROA-QIS5.pdf>

Solvency II Agenda

The following developments in relation to Solvency II are expected during Q3 2011:

April – July 2011: European Commission to draft and publish Level 2 legislation which fleshes out the requirements contained in the main Solvency II text. This should be followed by a public consultation period.

June – September 2011: Assessment of third countries' supervisory process for equivalence with principles established under Solvency II.

Currently underway: Development of Level 3 guidance by EIOPA after engagement in consultation with stakeholders.

Articles by the Ganado & Associates Insurance & Private Pensions Team

EU Insurance Mediation Directive versus EU Insurance Mediation Directive 2 – The Disclosure of Remuneration by Insurance Intermediaries

Directive 2002/92 on Insurance Mediation (IMD) lays down rules for the taking-up and pursuit of the activities of insurance and reinsurance mediation by both natural and legal persons which are established, or who wish to become established, in a Member State. The Directive does not distinguish between different classes or types of intermediaries such as agents and brokers. Various types of persons or institutions can distribute insurance products under the remit of the IMD.

Chapter III of the Directive covering articles 12 and 13 deals with information requirements for intermediaries and adopts a minimum harmonisation approach to the rules on the disclosures to customers which must be made by all intermediaries. Due to the fact that the Directive imposes minimum requirements, disclosure on remuneration requirements differs

by Member State leading to a broad range of national standards and an unequal treatment of this type of disclosure throughout the EU.

The Commission believes that the current level of consumer protection in the IMD is not transparent enough and there was also the need for a level playing field for customers throughout the EU when purchasing insurance products. As a result it requested EIOPA for technical advice leading to a review of the framework IMD with one of the points being the improvement of the transparency of remuneration for intermediaries involved in the selling of insurance products.

EIOPA provided its advice in November 2010. Members put forward three possible options for regulating the disclosure of remuneration. Remuneration includes commission information. The first option is the 'On request' regime whereby there is disclosure of remuneration only if the customer asks for the information. The current recommendation allows for the possibility for Member States to introduce further requirements should they deem it necessary. The second option provides for the full disclosure regime, whereby customers are always provided with information on remuneration irrespective of the type of product or market.

The third option foresees a mandatory risk-based disclosure regime where the duty to disclose only exists for products of high importance which protect against existential risks, or which entail higher risks of misselling for instance in the case of Life insurance and occupational disability.

The new proposed regime would therefore be of benefit to the customer base as it provides more transparency and as a result increased competition between intermediaries across the EU. This would lead to more competitive pricing to the benefits of the public.

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, **Dr. Mathew Brincat** at mbrincat@jmganado.com or **Dr. Elizabeth Ganado** at eganado@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.

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